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Information and Privacy
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INVESTIGATION REPORT

INVESTIGATION I92-66P


MINISTRY OF THE SOLICITOR GENERAL AND
CORRECTIONAL SERVICES



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint brought to our attention by the legal counsel of a union, on behalf of one of its members (the complainant). The complaint involved the Ministry of the Solicitor General, now the Ministry of the Solicitor General and Correctional Services (the Ministry).

On December 17, 1991, at 7:30 a.m., the complainant was driving his car on a public highway when two Ontario Provincial Police (OPP) officers stopped him. The complainant was found in possession of narcotics and was taken into police custody. He was released at about 12:00 noon after he had signed a document promising to appear in court on January 27, 1992. On the same day the complainant was taken into custody, one of the arresting officers advised the complainant's supervisor of his arrest and the pending charges. An information was subsequently laid on January 9, 1992 -- 23 days after the complainant's arrest. On February 26, 1992, the complainant's employment was terminated for conduct incompatible with his employment.

The complainant was of the view that his rights under the Freedom of Information and Protection of Privacy Act (the Act) had been violated and that the OPP officer's disclosure of his arrest and the pending charges was not in accordance with the Act.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Was section 37 of the Act applicable?
- (C) Was the OPP officer's disclosure to the complainant's employer in accordance with section 42 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

...

- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

We have determined that the information in question was the complainant's name together with the circumstances of his arrest i.e. that the complainant had been found in possession of narcotics and that charges were going to be laid against him. It is our view that this information met the requirements of paragraph (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was "personal information" as defined in section 2(1) of the Act.

Issue B: Was section 37 of the Act applicable?

The Ministry acknowledged that on the day the complainant was arrested, one of the arresting OPP officers informed an engineering supervisor of the details of the complainant's arrest and of the pending charges. This took place prior to the complainant signing the documents compelling a court attendance, and the laying of an information in court.

The Ministry, however, was of the view that section 37 of the Act was applicable to the disclosure of the complainant's personal information. Section 37 states:

This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public.

The Ministry submitted that:

... information relating to accused persons and their charges is available to the public. The personal information provided by PC [name of the police constable] could be found in a public record, e.g., a criminal court file.

The Ministry stated:

The OPP as a matter of general practice does not release information about accused persons prior to the laying of an information. While the Ministry acknowledges that the personal information was released in this instance before the information was laid, the Ministry submits that the information was soon to be available publicly.

The Ministry further submitted that the disclosure accorded with the "Guidelines for the Peremptory Disclosure of Personal Information Held by Law Enforcement Agencies", issued by the Management Board of Cabinet initially in December 1990, then revised and redistributed in

August 1992. The revised guidelines state in part that where an information is laid or will be laid in a courthouse, the personal information contained in the information, such as the name, date of birth and address of the accused, may be disclosed.

Under Section 37 of the Act, personal information that is maintained by an institution may be excluded from the application of Part III of the Act only if the personal information is maintained for the purpose of creating a record which is available to the general public.

In this case, at the time of the disclosure of the complainant's personal information by the OPP officer to the complainant's employer, charges had not been laid; documents compelling a court appearance had not been signed; and an information had not been laid in court.

It is thus our view that at the time of its disclosure, it could not be said that the information about the complainant's arrest and the pending charges was being maintained by the OPP for the purpose of creating a record which was available to the general public. Therefore, section 37 of the Act would not apply and the privacy provisions of Part III would not be excluded.

With respect to the guidelines issued by Management Board, we wish to take a narrower interpretation than the view expressed in the guidelines that law enforcement agencies may disclose personal information about an accused before an information is laid, on the basis that the information will be available to the general public.

Conclusion: Section 37 of the Act did not apply to the personal information disclosed by the OPP officer to the complainant's employer.

Issue C: Did the OPP officer disclose personal information to the complainant's employer, in accordance with section 42 of the Act?

Under the Act, an institution may not disclose personal information in its custody or under its control except in the specific circumstances outlined in section 42.

The Ministry submitted that the OPP officer's disclosure of the complainant's arrest and the pending charges was in accordance with section 42(a) which states:

An institution shall not disclose personal information in its custody or under its control except,

(a) in accordance with Part II;

As further support of this view, the Ministry cited a passage from the **Freedom of Information and Protection of Privacy Manual** produced by Management Board Secretariat which states:

Subsection 42(a) permits an institution to disclose personal information in circumstances where such a disclosure would be permitted under section 21 of the Act, even though the institution has not received an access request. This subsection should be read in conjunction with subsection 63(1) which permits a head to disclose information even though an access request has not been received.

In past compliance investigations, we have held the view that the section 42(a) exception to the section 42 prohibition against disclosure of personal information only applies in the context of a request by an individual, made under Part II of the Act, for personal information relating to another individual. Given that section 63(1) of the Act does not refer specifically to "personal information", and bearing in mind that one of the purposes of the Act as set out in section 1(b) is to protect the privacy of individuals with respect to personal information, it is our view that section 63(1) should be interpreted narrowly.

Nonetheless, we have examined section 63(1) in the circumstances of this case. In our view, even assuming that section 63(1) permits a head to disclose information where an access request has not been received, the disclosure in this specific case would not have been in accordance with section 42(a) of the Act.

The Ministry submitted that because the disclosure was not an unjustified invasion of personal privacy since the information was soon to be made public and because there were also health and safety concerns, the disclosure was in accordance with sections 21(1)(c), 21(1)(f) and 21(2)(b) of Part II of the Act.

It is our view that the sections cited by the Ministry in support of its position would not have applied. However, Section 21(3) of the Act would have been relevant to the disclosure of the complainant's arrest and of the pending charges.

Section 21(3) of the Act states that:

- (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
 - (a) was compiled and is identifiable as part of an investigation into a possible violation of law....

Section 28(1) of the Act provides that:

- (1) Before a head grants a request for access to a record,
 - (b) that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purposes of clause 21(1)(f),

the head shall give written notice in accordance with subsection (2) to the person to whom the information relates.

In this case, no notice as required under section 28(1)(b) was given to the complainant. Therefore, the disclosure of the complainant's arrest and the pending charges would not have been in accordance with Part II of the Act, and consequently, would not have been in accordance with section 42(a).

We have also examined the other provisions of section 42 of the Act and have determined that none of the provisions applied to the circumstances of this case.

Conclusion: The disclosure by the OPP officer of the complainant's arrest and the pending charges to his employer was not in accordance with section 42 of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was "personal information" as defined in section 2(1) of the Act.
- Section 37 of the Act did not apply to the personal information disclosed by the OPP officer to the complainant's employer.
- The disclosure by the OPP officer of the complainant's arrest and pending charges to his employer was not in accordance with section 42 of the Act.

RECOMMENDATION


We recommend that the Ministry take steps to ensure that in future, disclosures of personal information by the OPP are in accordance with the provisions of the Act as interpreted in this investigation.

Within six months of receiving this report, the Ministry should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation.

Original signed by: _____
Ann Cavoukian, Ph.D
Assistant Commissioner

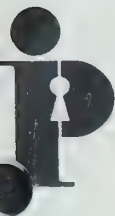
June 11, 1993

Date



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INVESTIGATION REPORT

INVESTIGATION I92-74M

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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint brought to our attention by the complainant's legal counsel (Counsel), concerning the social services department of a regional municipality (the Municipality).

In 1992, the complainant was successful in a rent review application to the Ministry of Housing. As a result, an order was made for the complainant's landlord to pay the rent rebate directly to the complainant. The complainant was receiving welfare benefits at the time, and the Municipality was in the process of determining the portion of the rent rebate due to it under the General Welfare Assistance Act.

The landlord paid the rent rebate to the Municipality, instead of to the complainant. As a result, the complainant, through her Counsel, initiated legal action against the landlord. The action resulted in a judgement that the landlord was to pay the monies directly to the complainant.

The complaint centres on the Municipality's disclosure of two letters dated August 13 and August 20, 1993, addressed to the complainant, by copying the complainant's landlord and his agent. The subject of the letters concerned the amount of rent rebate that the complainant would have to repay to the Municipality.

Counsel contends that in addition: a) the Municipality disclosed details of the complainant's entitlement to the rent rebate to an Alderman, and b) that the Municipality's Income Maintenance Supervisor, author of the two letters at issue, telephoned Counsel, on behalf of the landlord, in connection with a judgement against the landlord.

Counsel maintains that the question of entitlement is a matter between the complainant and the Municipality; not a subject for disclosure to third parties. Counsel states that such an invasion of privacy is commonly experienced by social assistance recipients such as the complainant.

Issues Arising from the investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the Municipal Freedom of Information and Protection of Privacy Act (the Act).
- (B) Did the Municipality disclose the personal information to the landlord and his agent in accordance with section 32 of the Act?
- (C) Did the Municipality disclose personal information to an Alderman?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to **financial transactions** in which the individual has been involved, (emphasis added)
- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The two letters to the complainant which were copied to the landlord and his agent indicated the portion of the rent rebate to be repayed to the Municipality by the complainant.

It is our view that this information met the requirements of paragraphs (b) and (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was personal information as defined in section 2(1) of the Act.

Issue B: Did the Municipality disclose the personal information to the landlord and his agent in accordance with section 32 of the Act?

The Municipality's Position

The Municipality maintained that copies of the letters at issue were not mailed to the landlord and his agent, and that only the letter dated August 20, 1993, had contained the cc's to the landlord and his agent. According to the Municipality, the complainant met with the Supervisor who gave her a letter detailing the portion of the rebate that was reimbursable to the Region. However, they did not specify which letter. According to the Municipality, the complainant indicated she wanted this information conveyed to her landlord and landlord's agent in order to keep the transaction simple, so that the landlord could pay both herself and the Municipality the amounts owing them. The Supervisor included the cc's on the letter so that the complainant had the option of delivering the letters herself.

However, when we called the Supervisor, he informed us that he himself had added the cc's to the August 13 letter.

Counsel's Position

Counsel provided us with copies of the two letters. Both contained cc's to the landlord and the agent, but on the August 13 letter, the cc's were in a different type from the main text. This would appear to confirm the Supervisor's statement above.

Counsel advised that instead of complying with the Rent Rebate Order, the landlord attended the offices of the Municipality and urged them to accept the rent rebate as he did not want to pay the complainant directly. The Municipality accepted the payment.

Counsel stated that the usual method for recovering overpayments is to permit the welfare recipient to receive payment from a third party and then deduct any overpayment incrementally from the recipient's future benefits. We were advised that for the Municipality to accept a payment from a third party, is most unusual. As the landlord had not strictly complied with the Order to pay the rent rebate to the complainant, she commenced garnishment proceedings against the landlord to have his bank account seized.

Counsel maintained that the August 13 letter was mailed to the complainant, and that the letter indicated it was copied to the landlord and his agent. The complainant told him that she had not requested the information be conveyed to her landlord. Counsel explained that there was no reason why the landlord would need the information in these letters, since the amount owing to the complainant was clearly stated on the Rent Review Order, and was to be paid directly to the complainant. At the time the August 13 letter was received by the complainant, she was not even aware of her landlord's involvement with the Municipality, and thus could not have consented to the disclosure of the letter to the landlord.

Counsel suggested that the complainant felt she had to deliver the letter in order to receive her portion of the rent rebate. To substantiate this claim, Counsel provided us with documentation to show that the complainant had received the rebate the day after she delivered the letter.

The complainant told Counsel that she personally delivered the August 20 letter to the landlord, because she believed that the August 13 letter had already been disclosed to the landlord and his agent, and because she was told her portion of the rent rebate would be processed faster if she delivered the letter herself.

We contacted the landlord concerning these letters. He responded that he could not remember whether or not he had received them.

Conclusion: We were unable to determine whether the Municipality had disclosed the Complainant's personal information to the landlord and his agent.

Issue C: Did the Municipality disclose personal information to the Alderman?

The Municipality maintained that there had been no disclosure of any personal information relating to the complainant's case. They confirmed that the Alderman had called the Manager of Income Maintenance to discuss the complainant's entitlement to the rebate, and the Municipality's legal entitlement to recover a portion of it. The Municipality stated that the Alderman had been well aware of the details concerning the complainant, before contacting them. However, the information they provided the Alderman was generic rather than specific, based on the statutory rights and general practices of the Municipality: the complainant's personal information was said not to have been disclosed.

The Alderman confirmed that she had called the Municipality on the matter of the complainant's entitlement to the rent rebate. She called in response to concerns raised by the landlord's daughter. We were unable to determine from the Alderman whether specific details of the complainant's case had been disclosed to her by the Municipality. The Alderman confirmed that she had been familiar with the complainant's case before calling the Municipality.

While counsel believed that the complainant's personal information had been disclosed to the Alderman by the Municipality, we found no evidence to confirm whether or not such disclosure had occurred.

Conclusion: We were unable to determine whether the Municipality had disclosed personal information to an Alderman.

Other Matters

Counsel was of the opinion that the Income Maintenance Supervisor appeared to be assisting the landlord in a tenancy matter between the complainant and her landlord, by appealing to Counsel for clarification of a garnishment against the landlord, so as to advise the landlord.

Our concern here is with the possible use of personal information in the Supervisor's possession.

The Municipality advised that the Supervisor's reason for contacting Counsel was to convey information pertinent to the complainant's case, and of benefit to Counsel and to his client: that the Municipality was returning all monies paid to them by the landlord, so that the landlord could then immediately re-issue payment correctly to the complainant.

Counsel's response was that monies did not have to be returned by the Municipality to the landlord as a condition precedent of the complainant receiving her monies from the court. Also, the landlord did not have to re-issue payment to the complainant since the court had already seized the monies from the landlord's bank account.

Absent sufficient evidence, we were unable to make any findings regarding the subject of the conversation between the Counsel and the Supervisor.

We make no recommendations in this report. While we were unable to conclude that the Municipality had disclosed the complainant's personal information, we were nonetheless concerned with the degree of involvement between the Municipality, the landlord, and his agent, in a matter involving the complainant's personal information.

The Municipality has advised that they are discussing a new internal procedure whereby any letters requested by social assistance recipients, containing personal information such as details of entitlement, will in future be addressed, "To Whom it May Concern". The information may then be disclosed at the recipient's discretion, without involving the Municipality.

We do, however, wish to remind the Municipality that due care should be exercised at all times to ensure the protection of personal privacy, when considering disclosures of personal information to third parties.

SUMMARY OF CONCLUSIONS

- o The information in question was personal information as defined in section 2(1) of the Act.
- o We were unable to determine whether the Municipality had disclosed the Complainant's personal information to the landlord and his agent.
- o We were unable to determine whether the Municipality had disclosed the complainant's personal information to an Alderman.

Original signed by:
Ann Cavoukian, Ph.D.
Assistant Commissioner

June 15, 1993
Date



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Commissioner/Ontario
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et à la protection de la vie privée/Ontario

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INVESTIGATION REPORT

INVESTIGATION I93-002P

THE MINISTRY OF THE ENVIRONMENT AND ENERGY



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of the Environment, now the Ministry of the Environment and Energy (the Ministry).

The complainant was concerned that the Ministry had disclosed his personal information without his consent, contrary to the Freedom of Information and Protection of Privacy Act (the Act). More specifically, he was concerned that the Ministry had disclosed facts about his subdivision in Amabel Township to a lawyer in Calgary. According to the complainant, a Planning Evaluator of the Ministry's Approval and Planning Unit had disclosed his personal information in four letters. These letters were:

- (1) Dated October 18, 1990, addressed to a named individual at the Owen Sound District Office regarding "storm drainage and site disturbance concerns".
- (2) Dated December 5, 1990, addressed to the complainant, regarding "drainage works".
- (3) Dated January 31, 1991, addressed to a named individual at the Bruce/Grey/Owen Sound Health Unit, regarding "surface water drainage proposal".
- (4) Dated March 14, 1991, addressed to a named individual at the Plans Administration Branch, Ministry of Municipal Affairs, regarding "review of storm water management plan".

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the Act?
- (B) If the answer to the above question is "yes", was the personal information disclosed in accordance with section 42 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?

Under section 2(1) of the Act "personal information" means "recorded information about an identifiable individual."

There is a clear differentiation between individuals who are acting in a **personal** capacity and individuals who are acting **on behalf of** an incorporated body. The Information and Privacy Commissioner has held in Orders 80, 113 and P-257 that the name of an individual, when acting on behalf of an incorporated body, is corporate information -- not personal information.

The Ministry's Freedom of Information and Protection of Privacy Co-ordinator (the Co-ordinator) provided our office with copies of the letters at issue, but would not confirm or deny that these records had been disclosed. According to the Ministry, the complainant's name was not "personal information" as it is defined in the Act because the subdivision application records the registered owner as "Chiefs' Park Limited", with the complainant as the President. According to the Co-ordinator, correspondence was received from the complainant on Chiefs' Park Limited letterhead indicating that the complainant was representing that company. The Ministry also acknowledged that it mentioned the complainant's name and address in one of the letters. This particular letter did not refer to the complainant in his corporate capacity. Further, the letters dated January 31, 1991, and March 14, 1991, referred to the complainant and not Chiefs' Park Limited as the owner of the subdivision.

Legal Counsel for the complainant submitted that since the complainant is one and the same person as his corporation Chiefs' Park Limited, all of the information contained in the letters in question was personal to the complainant. Legal Counsel also submitted that Orders 80 and 113 were only authority for the fact that if someone had asked for the name of the President of Chiefs' Parks Limited, the complainant's name could be disclosed. Counsel further submitted that Order P-257 did not apply to this investigation, and that in his view, the term "person" in the Act should include "corporation", making reference to the Interpretation Act.

The use of the term "individual" in the Act makes it clear that the protection provided with respect to the privacy of personal information relates only to natural persons. Had the legislature intended an "identifiable individual" to include a corporation, it could and would have used the appropriate language to make this clear. The types of information enumerated under section 2(1) of the Act as "personal information" when read in entirety, lend further support to the conclusion that "personal information" relates only to natural persons.

There may be cases where the information about a business may be so closely connected to information about an individual that the information may qualify as being "personal" for purposes of the Act. We acknowledge that in the correspondence in question, the complainant was identified personally rather than in his corporate capacity, and that the corporation was owned by the complainant. However, these letters contained information relating to the subdivision owned by Chiefs' Park Limited, and the correspondence had been written on corporate letterhead, indicating that the complainant was representing the company.

After carefully considering these facts, it is our view that the information contained in the letters at issue did not constitute the complainant's "personal information". These letters contained information relating to the subdivision owned by Chiefs' Park Limited. Accordingly, Part III of the Act did not apply in the circumstances of this complaint.

Conclusion: The information in question was not "personal information" as defined by section 2(1) of the Act.

As we did not find the information to be personal information under the Act, issue B was not addressed.

SUMMARY OF CONCLUSIONS

- The information in question was not "personal information" as defined by section 2(1) of the Act.

RECOMMENDATION

We are concerned that the Ministry's correspondence erroneously referred to the complainant (instead of the corporation) as the owner of the subdivision. Therefore, we recommend that the Ministry review its practices and take the necessary precautions to ensure that such errors do not occur in future.

Within six months of receiving this report, the Ministry should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation.

Original signed by: _____
Ann Cavoukian, Ph.D.
Assistant Commissioner

July 20, 1993

Date

Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

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INVESTIGATION REPORT

INVESTIGATION I92-84M

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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a Municipality's Ambulance Service. The complainant is an employee of the Ambulance Service.

The complainant attended an ambulance call, which caused him to experience "critical incident" stress. As a result of this, the complainant used the services of the Ambulance Service's staff psychologist (the Psychologist). The complainant then filed a claim with the Workers' Compensation Board (the WCB).

The complainant stated that after the claim had been filed, his supervisor (the Supervisor) at the Ambulance Service had collected and then disclosed his personal information to the WCB, contrary to the Municipal Freedom of Information and Protection of Privacy Act (the Act). According to the complainant, although the Psychologist had assured him of confidentiality, the Psychologist had also disclosed his personal information to the Supervisor and the WCB, contrary to the Act.

The complainant also submitted that his personal information was presently accessible to all management staff.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the Act?
- (B) Was the collection of personal information by the Supervisor in accordance with section 28(2) of the Act?
- (C) Was the disclosure of personal information by the Supervisor to the WCB in accordance with section 32 of the Act?
- (D) Did the Psychologist disclose personal information to the Supervisor? If yes,
- (E) Was this disclosure by the Psychologist to the Supervisor in accordance with section 32 of the Act?
- (F) Was the disclosure of personal information by the Psychologist to the WCB in accordance with section 32 of the Act?

- (G) Were reasonable measures in place to prevent unauthorized access to personal information in accordance with section 3(1) of Regulation 823 under the Act, as amended by Regulation 395/91?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual...
- (g) the views or opinions of another individual about the individual,
- (h) the individual's name where it appears with other personal information relating to the individual...

The complainant provided us with a number of documents containing his personal information. These documents included two WCB memoranda to file, one containing the complainant's medical information, and the other containing the Supervisor's opinion of the complainant, as well as other information relating to the complainant. The documents also included telephone notes made by the Supervisor with details about the complainant's contact with the Psychologist, and two internal memoranda containing information related to the complainant's WCB claim.

It is our view that the information contained in these documents met the requirements in paragraphs (b), (g) and (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was "personal information" as defined in section 2(1) of the Act.

Issue B: Was the collection of personal information by the Supervisor in accordance with section 28(2) of the Act?

Section 28(2) states:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or **necessary to the proper administration of a lawfully authorized activity.** (emphasis added)

The complainant submitted that the Supervisor did not have the authority to collect his personal information. The complainant provided copies of telephone notes and memoranda. One memorandum indicated that the Supervisor had conducted an investigation relating to the complainant's WCB claim in which he had spoken to the police on the scene of the ambulance call and to detectives investigating the scene, and to "others who have spoken to [the complainant] concerning his experience ...".

The Ambulance Service submitted that the Supervisor had the authority to collect information about the complainant's claim for WCB benefits, in order to satisfy the WCB and to provide it with comprehensive information. According to the Ambulance Service, any time a WCB claim is under dispute, the Supervisor has an obligation to collect appropriate information to forward to the WCB in accordance with its Personnel Corporate Workers' Compensation Manual (the Manual) which includes a section on Accident and Reporting. The Ambulance Service submitted that since the Supervisor had a duty to provide the WCB with appropriate information about the claim, the Supervisor's collection of personal information was necessary to the proper administration of the lawfully authorized activity of processing the WCB claim.

The complainant subsequently provided us with documentation indicating that the Ambulance Service has a Health and Safety Unit (the Unit) which includes a Workers' Compensation and Rehabilitation division. This division is responsible for dealing with employee occupational injury and illness which involves: "The administration of WCB accident claims; Signing all compensation forms ensuring proper accuracy and completion; Reviewing all compensation claims ensuring compliance as required by the Workers' Compensation Act including the submission of required reports and information".

We examined both the Manual and the information submitted by the complainant. In our view, the processing of an employee's WCB claim is a lawfully authorized activity. As part of this process, the Ambulance Service had an obligation to ensure that the WCB had all the necessary information with respect to the processing of the claim. It was necessary, therefore, for the Supervisor to collect the complainant's personal information, relevant to the processing of the claim, for the purpose of providing the information to the Unit. The Unit was then responsible for forwarding it to the WCB on behalf of the employer. In our view the Supervisor's collection of the complainant's personal information, relevant to the processing of the WCB claim, was necessary for the proper administration of a lawfully authorized activity.

Conclusion: The collection of personal information was in accordance with section 28(2) of the Act.

Issue C: Was the disclosure of personal information by the Supervisor to the WCB in accordance with section 32 of the Act?

Section 32(e) of the Act states:

An institution shall not disclose personal information in its custody or under its control except,

- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or a treaty;

One of the WCB memos to file which the complainant had provided to us, outlined a telephone conversation between a WCB employee and the Supervisor. The memorandum detailed the Supervisor's opinion of the cause of the critical incident stress and his views as to the complainant's ability to deal with the matter, as well as his work relationship with the complainant.

The Ambulance Service advised that it relied upon section 32(e) of the Act for this disclosure and referred us to section 133(1) of the Workers' Compensation Act (the WCA). This section states in part that an employer shall: "in any case furnish such further details and particulars respecting any accident or claim to compensation as the Board may require." The Ambulance Service submitted that the Supervisor's disclosure was to provide further details and particulars to the WCB. This was especially important since the claim was under dispute -- the Supervisor had an obligation to forward appropriate information to the WCB.

The complainant stated that the Supervisor should not have disclosed his personal information directly to the WCB, but rather, to the Unit which would then have contacted the WCB. In response to this, the Ambulance Service submitted that both the Unit and the Supervisor share the responsibility of ensuring that the WCB is informed of all the facts relevant to a claim. The Ambulance Service stated that, in communicating directly with the WCB, the Supervisor fulfilled his responsibility of providing the relevant facts to the WCB, in a timely manner. Further, the existence of the Unit was not intended to, nor relieves the Supervisor of the responsibilities outlined in the Manual or the Corporate Health and Safety Manual, the WCA, or the Occupational Health and Safety Act. The Ambulance Service stated that while the Unit does have the responsibility for day-to-day claims management and for communicating with the WCB, this does not override the Supervisor's responsibilities for claims management which include keeping the Unit informed and communicating with the WCB.

In our view, section 133(1) of the WCA requires an employer to provide the WCB with any information respecting a claim which the WCB may require. Since it is the responsibility of the Unit to administer WCB accident claims, the Unit would be acting as the employer. As such, any disclosure of personal information by the Unit to the WCB would be in accordance with section 133(1) of the WCA and thus, would be in accordance with section 32(e) of the Act. However, in this case, the Supervisor disclosed personal information to the WCB directly and not to the Unit, which was responsible for communicating with the WCB and administering the complainant's claim. The Ambulance Service has submitted that the Supervisor is equally responsible for the administration of WCB claims which includes communicating with the WCB directly. After carefully reviewing all of the information provided by the Ambulance Service in this regard, it is our view that the information does not demonstrate that the Supervisor was equally responsible for the administration of WCB claims and direct communications with the WCB. There appears to be no written policy available to all employees which clearly states that both share equal responsibility.

Further, on one occasion where the Supervisor communicated information to the Unit, his memorandum stated, "I would welcome [the complainant's] Adjudicator to telephone me or meet with me to discuss this further or answer any questions she/he may have." In our view, this demonstrates that the Supervisor was aware of the Unit's role and responsibility to communicate with the WCB regarding the complainant's claim.

Therefore, we remain of the view that the Unit was responsible for administering the WCB claim and communicating with the WCB. Since the Unit was responsible for acting on behalf of the employer, the disclosure of the personal information by the Supervisor to the WCB was not made in accordance with section 133(1) of the WCA. Therefore, the disclosure was not in accordance with section 32(e) of the Act.

We have examined the other provisions of section 32 which permit disclosure and have determined that none were applicable to the disclosure made by the Supervisor to the WCB.

Conclusion: The disclosure by the Supervisor to the WCB of the complainant's personal information was not in accordance with section 32 of the Act.

Issue D: Did the Psychologist disclose personal information to the Supervisor?

According to the complainant, the Psychologist disclosed his personal information to the Supervisor on at least two occasions. As evidence of these disclosures, he provided us with the following:

Disclosure 1: A WCB worker's file note stating that the Supervisor had advised her that "It was indicated by [the Psychologist] that the worker's problems might have been triggered by something else concerning his personal life."

The complainant also referred to the Supervisor's internal memorandum wherein he indicated that he had conducted an investigation relating to the complainant's WCB claim, during which he had contacted "others who have spoken to [the complainant] concerning his experience and I am not satisfied that [the complainant] has experienced critical incident stress." The complainant informed us that he had spoken to no one other than the Psychologist about the incident. The complainant questioned how the Supervisor could have made a finding of this nature without any input from the Psychologist. In his comments on the draft report, the complainant provided further information to support his view that there had been a disclosure.

Disclosure 2: A copy of a telephone note made by the Supervisor during a conversation with the Psychologist that stated: "Spoke to [the Psychologist] - said he'd spoken to [the complainant] - didn't want to meet him - seeing his own Dr. - went on for about an hour re how DAS had errored in ensure contact = him".

The Ambulance Service has advised that the Psychologist maintained that he had not disclosed any personal information to the Supervisor.

We have examined the documents provided by the complainant, including the information provided in response to the draft report. With regard to the first disclosure, it remains our view that the documents do not establish conclusively that the Psychologist disclosed the specific personal information about the complainant's critical incident stress to the Supervisor. Therefore, we remain unable to conclude that the first disclosure had occurred.

However, with regard to the second disclosure, it is our view that the telephone note did establish that the Psychologist disclosed to the Supervisor, the fact that he had made contact with the complainant and the subject matter of that contact regarding, for example, the fact that the complainant was seeing his own doctor. Therefore, in our view, we can conclude that the second disclosure did occur.

Conclusion: The Psychologist disclosed the complainant's personal information to the Supervisor.

Issue E: Was this disclosure by the Psychologist to the Supervisor in accordance with section 32 of the Act?

The Ambulance Service stated that it relied upon section 32(d) of the Act for the disclosure.

Section 32(d) of the Act states:

An institution shall not disclose personal information in its custody or under its control except,

- (d) if the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and if the disclosure is necessary and proper in the discharge of the institution's functions.

The Ambulance Service stated that the Supervisor needed the complainant's personal information in the performance of his duties. The Ambulance Service submitted that the Supervisor was required to both ensure the well-being of the employee by ensuring that the Psychologist and the complainant had made contact, and to provide the WCB with comprehensive information regarding the WCB claim. In its comments on the draft report, the Ambulance Service submitted that a significant factor in the WCB's decision to grant or deny a claim is whether or not an individual has sought medical attention, or if there is a delay in seeking medical attention. This is also relevant to a supervisor's decision to question a WCB claim or to appeal a decision. Therefore, based upon this information, the Ambulance Service submitted that the Supervisor needed to know of any contact between the Psychologist and the complainant as part of his responsibility for investigating the WCB claim and ensuring the well-being of the employee. Accordingly, the disclosure by the Psychologist to the Supervisor was a disclosure to an employee who needed the information in the performance of his duties, and it was necessary and proper in the discharge of the institution's functions.

It is our view that the investigation and processing of employees' WCB claims are administrative functions of the institution. The Ambulance Service submitted that the personal information in question was relevant to a supervisor's investigation of a WCB claim since it might affect his decision to question a claim or to appeal a decision. In this case, the Supervisor placed a question on the complainant's claim with the Unit before he called the Psychologist regarding any contact he had had with the complainant. Thus, in this case, it is our view that the information from the Psychologist was not necessary for the Supervisor to place a question on the complainant's claim with the Unit. In addition, it is our view that the disclosure by the Psychologist of his contact with the complainant, and any details relating to that contact, was not necessary and proper for the purpose of processing the WCB claim. Therefore, it is our view that the disclosure was not in accordance with section 32(d) of the Act.

In our draft report we stated that we had examined the application of section 32(c) of the Act to the disclosure. Section 32(c) permits the disclosure of personal information "for the purpose for which it was obtained or compiled or for a consistent purpose". We stated that in our view, one of the purposes for the complainant's personal information being obtained by the Psychologist during the course of assisting him, would have reasonably been to ensure the well-being of the complainant as an employee. It was thus our view that the Psychologist's disclosure of the fact that he and the complainant had made contact was, in part, to reassure the Supervisor that contact had been made with the employee and that he was in fact receiving assistance from the Psychologist. The Supervisor, as the complainant's supervisory officer, was responsible for the well-being of the employee, in the workplace. Therefore, it was our view that the disclosure to the Supervisor by the Psychologist of his contact with the complainant (but not the details of the contact) would have been in accordance with section 32(c) of the Act.

Since then, however, documentation provided by the complainant indicates that it is not the Supervisor but the Unit that co-ordinates all matters pertaining to Health and Safety in the workplace; specifically, the Workers' Compensation and Rehabilitation division has the responsibility for dealing with employee occupational injury and illness.

In addition, the complainant provided information regarding the confidentiality requirements for the Ambulance Service's Critical Incident Stress Debriefing Team (the Team) of which the Psychologist is a member. This information indicates that emphasis is given to staff being "entitled to strict and complete confidentiality including anonymity of person and events..." in most situations where a member of the Team has been contacted. The complainant also provided a copy of a statement later made by the Psychologist regarding his contact with the complainant, which reads in part, "At our first meeting I did inform him that he need not disclose the fact that he had met with me. No one needed to know that we had even met. I indicated the Department fully respects the concept of client confidentiality."

The Ambulance Service provided information from the Corporate Health and Safety Manual outlining that a competent supervisor must "take every precaution reasonable in the circumstances for the protection of a worker", and a policy which states: "all levels of management have, as a primary responsibility, the safety and personal well-being of employees directly below them". The Ambulance Service maintained that all supervisors have a

responsibility to ensure the personal well-being of their employees, and a responsibility to the public to ensure that employees are able to perform their duties. The Ambulance Service stated that it is not feasible in practice, or justifiable under the WCA or the Occupational Health and Safety Act, for the Unit to coordinate **all** matters pertaining to Health and Safety in the workplace, or to have sole responsibility for these matters with employees.

We have carefully reviewed all of the information provided by both parties. We remain of the view that one of the purposes for the complainant's personal information being obtained by the Psychologist during the course of assisting him would have reasonably been to ensure the well-being of the complainant as an employee. We acknowledge that supervisors do have some responsibility for the health and safety of their employees in addition to the Unit's responsibilities. However, in our view, when the Ambulance Service established its Critical Incident Stress Debriefing Team, employee health and safety would have been a factor considered in its development. The policy of confidentiality of contact with the Team would have been drafted with the well-being of the employees who used the services of the Team in mind. Thus in our view, the Team has the primary responsibility for ensuring the well-being of the employee and as part of that responsibility, Team members are required to abide by the Ambulance Service's confidentiality policy. Thus we regard the disclosure by the Psychologist of his contact with the complainant, which was contrary to this policy, not to have been for the well-being of the employee.

Given the Ambulance Service's policy of strict confidentiality regarding staff contact with the Team, it is our view that it was inappropriate for the Supervisor to have been informed by the Psychologist that contact had been made between the Psychologist and the complainant. Since it is our view that the Psychologist's disclosure of his contact with the complainant to the Supervisor was not for the purpose of ensuring the well-being of the complainant as an employee, we do not consider the Psychologist's disclosure to have been made for one of the purposes for which he had obtained the information. Therefore, it was not in accordance with section 32(c) of the Act. It is also our view that no other provisions in section 32 applied to this disclosure.

Conclusion: The Psychologist's disclosure to the Supervisor was not in accordance with section 32 of the Act.

Issue F: Was the disclosure of personal information by the Psychologist to the WCB in accordance with section 32 of the Act?

The complainant provided a statement from his WCB claim file which showed that the Psychologist had been contacted by the WCB to obtain a diagnosis and authorization for the complainant to be off work. The Psychologist told the WCB that he had met with the complainant and would be seeing him on a regular basis, but would not comment on a diagnosis or authorization for the complainant to be off work.

The Ambulance Service has stated that if there had in fact been a disclosure, it would have been in accordance with section 32(e) of the Act. Section 32(e) states that an institution shall not disclose personal information in its custody or under its control except for the purpose of complying with an Act of the Legislature or an Act of Parliament. The Ambulance Service had relied upon section 133(1) of the WCA, for the same reasons as outlined in Issue C.

It is our view that the WCA requires an employer to provide the WCB with any information respecting a claim which the WCB may require. The Psychologist, who was an employee of the Ambulance Service, was contacted by the WCB for further details and particulars respecting the complainant's claim. Since the WCA requires an employer to provide the WCB with any information it may require, it is our view that the Psychologist disclosed the complainant's personal information in accordance with section 32(e) of the Act.

Conclusion: The Psychologist's disclosure to the WCB was in accordance with section 32(e) of the Act.

Issue G: Were reasonable measures in place to prevent unauthorized access to personal information in accordance with section 3(1) of Regulation 823 under the Act, as amended by Regulation 395/91?

Section 3(1) of Regulation 823, as amended by Regulation 395/91, states:

Every head shall ensure that reasonable measures to prevent unauthorized access to the records in his or her institution are defined, documented and put in place, taking into account the nature of the records to be protected.

It is our understanding that during the day, supervisors may record various daily incidents in notebooks or logs. According to the complainant, the supervisors' logs are located in the management office and are accessible by all management staff. In his submissions to our draft, the complainant maintained that this also applies to supervisors' telephone notes. The complainant advised us that his personal information relating to the WCB claim had been "leaked" to Ambulance Service staff through the Supervisor's telephone notes. He also submitted that another staff member had read the Supervisor's telephone notes containing his personal information, and had informed him of the contents of these notes.

The Ambulance Service has advised that the logs are kept locked in wooden boxes located in the basement of the area office. When supervisors are on the road, these logs are kept with them at all times. At the end of the day when supervisors return to the office, the logs are returned to the boxes; supervisors have a key to their own boxes. The Area Manager also has a key to each individual box but uses the key only in emergencies when the supervisor is away from the office or on vacation. The Ambulance Service also advised that supervisors do not routinely keep telephone notes separately from the logs. In this case, the Supervisor felt that separate telephone notes were necessary. The Ambulance Service advised that supervisors' telephone notes are kept with the logs in the locked boxes, or are locked in the supervisors' offices during

the day. The Ambulance Service has thus maintained that any telephone notes made by supervisors are kept in the same secure fashion as the logs, and that reasonable measures are in place to prevent unauthorized access to them.

The complainant submitted that there is no policy regarding the security of telephone notes. He stated that he learned of the Supervisor's contact with the WCB from another staff member who had gained access to the Supervisor's telephone notes while the notes were at the Supervisor's desk. As evidence, the complainant provided a memorandum from his WCB claim file which notes that he contacted the WCB Adjudicator to ask about the Supervisor's contact with the WCB. The complainant informed the WCB Adjudicator that he had learned about the Supervisor's contact with the WCB from one of his co-workers. The complainant submitted that his co-worker could only have accessed this particular information through the telephone notes. Based upon this, the complainant submitted that reasonable measures were not in place to prevent unauthorized access to the telephone notes.

We have carefully reviewed the information provided by the complainant. It is our view that the documents do not establish conclusively that there was unauthorized access to the Supervisor's telephone notes. Further, while it appears in this instance that Ambulance Service staff may have become aware of the incident relating to the complainant's WCB claim, we were unable to determine conclusively that this had resulted from unauthorized access to the log books and telephone notes.

We have reviewed the procedures for the log books and telephone notes and it is our view that reasonable measures are in place to prevent unauthorized access while the logs and telephone notes are in the area office. However, section 3(1) of the Regulation requires that these measures be "defined" and "documented".

In a previous investigation which also involved supervisors' logs (in part), we found that the Ambulance Service's Privacy Guidelines did not address the matter of supervisors' logs and the measures in place to prevent their unauthorized access. In this investigation, we noted that there were there are no guidelines as of yet, specifically addressing the matter of logs and telephone notes, and the measures in place to prevent their unauthorized access.

Conclusion: Reasonable measures were in place to prevent unauthorized access to the personal information contained in the supervisors' logs and the telephone notes. However, these measures have not been "defined" or "documented", as required by section 3(1) of Regulation 823 under the Act, as amended by Regulation 395/91.

OTHER MATTERS

The complainant also raised a concern that the personal information disclosed by the Supervisor to the WCB was incorrect. We would like to refer the complainant to section 36(2) of the Act which sets out the complainant's right of correction to his personal information (see Appendix A for full text).

SUMMARY OF CONCLUSIONS

- The information in question was "personal information" as defined in section 2(1) of the Act.
- The collection of personal information was in accordance with section 28(2) of the Act.
- The disclosure by the Supervisor to the WCB of the complainant's personal information was not in accordance with section 32 of the Act.
- The Psychologist disclosed the complainant's personal information to the Supervisor.
- The Psychologist's disclosure to the Supervisor was not in accordance with section 32 of the Act.
- The Psychologist's disclosure to the WCB was in accordance with section 32(e) of the Act.
- Reasonable measures were in place to prevent unauthorized access to the personal information contained in the supervisors' logs and telephone notes. However, these measures have not been "defined" or "documented", as required by section 3(1) of Regulation 823 under the Act, as amended by Regulation 395/91.

RECOMMENDATIONS

We recommend that:

1. The Ambulance Service take steps to ensure that all staff are aware of the limited purposes for which the disclosure of personal information is permitted under section 32 of the Act.
2. If it is the Ambulance Service's intent that supervisors should have equal responsibility as the Health and Safety Unit for the administration of WCB claims, including communicating directly with the WCB, then the Ambulance Service should clearly set this out in a written policy, and ensure that all staff are made aware of it.
3. The Ambulance Service's Privacy Guidelines should include information regarding the measures in place for the safe storage of supervisors' logs and telephone notes, and access to them.

Within six months of receiving this report, the Ambulance Service should provide the Office of the Information and Privacy Commissioner/Ontario with proof of compliance with the above recommendations.

Original signed by:
Ann Cavoukian, Ph.D.
Assistant Commissioner

September 30, 1993
Date

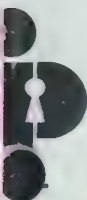
APPENDIX A

36. (1) Every individual has a right of access to,

- (a) any personal information about the individual contained in a personal information bank in the custody or under the control of an institution; and
- (b) any other personal information about the individual in the custody or under the control of an institution with respect to which the individual is able to provide sufficiently specific information to render it reasonably retrievable by the institution.

(2) Every individual who is given access under subsection (1) to personal information is entitled to,

- (a) request correction of the personal information if the individual believes there is an error or omission;
- (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made; and
- (c) require that any person or body to whom the personal information has been disclosed within the year before the time a correction is requested or a statement of disagreement is required be notified of the correction or statement of disagreement.



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INVESTIGATION REPORT

INVESTIGATION I92-90M

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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a Municipality's Ambulance Service.

The complainant is an employee of the Ambulance Service. While on duty he consulted with the staff psychologist (the Psychologist) regarding an ambulance call on May 14, 1992, which caused him to experience "critical incident" stress. The complainant then filed a claim with the Workers' Compensation Board (the WCB). He subsequently requested access to his file regarding that particular ambulance call. During a review of his file he noticed that an exchange of communication had been documented between the Psychologist and his Supervisor regarding the ambulance call on May 14, 1992. It is the complainant's view that his privacy was breached when his Supervisor consulted with the Psychologist and with a Union Representative about his treatment, diagnosis and follow-up interviews in connection with his workers' compensation claim.

The complainant was also concerned that the Ambulance Service had documented and filed his personal and confidential information, in a place that was accessible to other management staff. According to the complainant, these actions contravened the Municipal Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the investigation

The following issues were identified as arising from the investigation:

- A. Was the information in question "personal information" as defined in section 2(1) of the Act?
- B. Was the disclosure of personal information by the Psychologist to the Supervisor in accordance with section 32 of the Act?
- C. Was the disclosure of personal information by the Supervisor to the Union Representative in accordance with section 32 of the Act?
- D. Were reasonable measures in place to prevent unauthorized access to personal information in accordance with section 3(1) of Regulation 823 under the Act, as amended by Regulation 395/91?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual
- (h) the individual's name where it appears with other personal information relating to the individual.

The complainant provided us with a number of documents containing his personal information. These documents included one set of telephone notes made by the Supervisor regarding details about the complainant's contact with the Psychologist; an internal memorandum containing information related to the complainant's WCB claim, and a note written by the Union Representative containing details of discussions with the Supervisor about the WCB claim.

It is our view that the information contained in these documents met the requirements of paragraphs (b) and (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was "personal information" as defined in section 2(1) of the Act.

Issue B: Was the disclosure of personal information by the Psychologist to the Supervisor in accordance with section 32 of the Act?

We have determined from the documents provided by the complainant that the Psychologist had disclosed to the Supervisor the fact that he had been in contact with the complainant about his WCB claim for critical incident stress. It is our view that these documents did not support the complainant's view that the Psychologist had disclosed additional details about their meetings.

In our draft report, we stated that we had examined the application of section 32(c) of the Act to the Psychologist's disclosure of his contact with the complainant to the Supervisor. Section 32(c) permits disclosure of personal information "for the purpose for which it was obtained or compiled or for a consistent purpose". We stated that in our view one of the purposes for the complainant's personal information being obtained by the Psychologist during the course of

assisting him, would have reasonably been to ensure the well-being of the complainant as an employee. It was thus our view that the Psychologist's disclosure of the fact that he and the complainant had made contact was, in part, to reassure the Supervisor that the employee had contacted him and was being assisted with respect to his critical incident stress. The Supervisor, as the complainant's supervisory officer, was responsible for the well-being of the employee, in the workplace. Therefore, since the personal information could be said to have been disclosed for one of the purposes for which it had been obtained, it was our view that the disclosure by the Psychologist to the Supervisor of his contact with the complainant would have been in accordance with section 32(c) of the Act.

However, we subsequently obtained additional information indicating that the Ambulance Service had a Health and Safety Unit (the Unit) which includes a Worker's Compensation and Rehabilitation division. This division has the responsibility for dealing with employee occupational injury and illness, which includes: "The administration of WCB accident claims; Signing all compensation forms ensuring proper accuracy and completion; Reviewing all compensation claims ensuring compliance as required by the Workers' Compensation Act including the submission of required reports and information". It is not, therefore, the Supervisor but the Unit which is primarily responsible for matters pertaining to health and safety in the workplace, including employee occupational injury and illness.

In addition, we also obtained information regarding the confidentiality requirements for the Ambulance Service's Critical Incident Stress Debriefing Team (the Team) of which the Psychologist is a member. This information indicates that emphasis is given to staff being "entitled to strict and complete confidentiality including anonymity of person and events..." in virtually all situations where a member of the Team was contacted.

The Ambulance Service submitted information from the Corporate Health and Safety Manual outlining that a competent supervisor must "take every precaution reasonable in the circumstances for the protection of a worker", and a policy which states that "all levels of management have, as a primary responsibility, the safety and personal well-being of employees directly below them". The Ambulance Service has maintained that all supervisors have a responsibility to ensure the personal well-being of their employees, and a responsibility to the public, to ensure that employees are able to perform their duties. The Ambulance Service stated that it is not feasible in practice, or justifiable under the WCA or the Occupational Health and Safety Act, for the Unit to coordinate **all** matters pertaining to Health and Safety in the workplace, and to have the sole responsibility for these matters with employees.

We have carefully reviewed all of the information provided. We remain of the view that one of the purposes for the complainant's personal information being obtained by the Psychologist to assist him, would have reasonably been to ensure the well-being of the complainant as an employee. We acknowledge that supervisors do have some responsibility for the health and safety of their employees in addition to the Unit's responsibilities. However, in our view, when the Ambulance Service established its Critical Incident Stress Debriefing Team, employee health and safety would have been a factor considered in its development. The policy of confidentiality of contact with the Team would have been drafted with the well-being of the employees who

used the services of the Team in mind. It is thus our view that the Team has the primary responsibility for ensuring the well-being of the employee, and as part of this responsibility, Team members are required to abide by the Ambulance Service's confidentiality policy. Thus we regard the disclosure by the Psychologist of his contact with the complainant, which was contrary to this policy, not to have been for the well-being of the employee.

Given the Ambulance Service's policy of strict confidentiality regarding staff contact with the Team, it is our view that it was inappropriate for the Supervisor to have been informed by the Psychologist that contact had been made between the Psychologist and the complainant. Since it is our view that the Psychologist's disclosure of his contact with the complainant to the Supervisor was not for the purpose of ensuring the well-being of the complainant as an employee, we do not consider the Psychologist's disclosure to have been made for one of the purposes for which he had obtained the information. Therefore, it was not in accordance with section 32(c) of the Act. It is also our view that no other provisions in section 32 applied to this disclosure.

Conclusion: The Psychologist's disclosure to the Supervisor was not in accordance with section 32 of the Act.

Issue C: Was the disclosure of personal information by the Supervisor to the Union Representative in accordance with section 32 of the Act?

Section 32(e) of the Act states:

An institution shall not disclose personal information in its custody or under its control except,

- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or treaty.

A note written by the Union Representative contained details of discussions with the Supervisor about the complainant's claim, and about the fact that the complainant had been seeing the staff Psychologist.

The Ambulance Service submitted that this disclosure was in accordance with section 32(e) since it was authorized under Article 1 of the Collective Agreement established under the Labour Relations Act. According to the Ambulance Service, Article 1 of the Collective Agreement implies that an employee may request the Union to represent him/her at any disputed matter or grievance. In this particular situation, the complainant's Supervisor was inquiring as to whether the Union Representative was in support of the complainant's WCB claim.

We have determined that the complainant had not asked his union representative to represent him regarding his WCB claim.

Article 1 of the Collective Agreement states:

In this Agreement "employee" means a person hired by the Metropolitan Corporation for either the Permanent or Temporary Service, for a position which comes within the Bargaining Unit described in Article 2 hereof, and who is on the active payroll of the Metropolitan Corporation.

It is our view that Article 1 of the Collective Agreement does not provide for the disclosure of the complainant's personal information, in this case, by the Supervisor to the Union Representative. Therefore, the disclosure was not for the purpose of complying with an agreement made under an Act of the Legislature and thus, was not in accordance with section 32(e) of the Act.

We have examined the other provisions of section 32 which permit disclosure but have determined that none were applicable in the circumstances of this case.

Conclusion: The Supervisor's disclosure of the complainant's personal information to the Union Representative was not in accordance with section 32 of the Act.

Issue D: Were reasonable measures in place to prevent unauthorized access to personal information in accordance with section 3(1) of Regulation 823 under the Act, as amended by Regulation 395/91?

Section 3(1) of Regulation 823, as amended by Regulation 395/91, states:

Every head shall ensure that reasonable measures to prevent unauthorized access to the records in his or her institution are defined, documented and put in place, taking into account the nature of the records to be protected.

It is our understanding that during the day, supervisors may record various daily incidents in notebooks or logs. According to the complainant, the supervisors' logs are located in the management office and are accessible by all management staff.

The Ambulance Service has advised that the logs are kept locked in wooden boxes located in the basement of the area office. When supervisors are on the road these logs are kept with them at all times. At the end of the day when supervisors return to the office, the logs are returned to the wooden boxes. Supervisors have a key to their own boxes. The Area Manager also has a key to each individual box but uses the key only in emergencies when the supervisor is away from the office or on vacation.

We have reviewed these procedures and it is our view that reasonable measures are in place to prevent unauthorized access to supervisors' logs while they are in the area office. However, section 3(1) of the Regulation requires that these measures be "defined" and "documented".

In a previous investigation which also involved supervisors' logs (in part), we found that the Ambulance Service's Privacy Guidelines did not address the matter of supervisors' logs and the measures in place to prevent their unauthorized access. We noted that no steps had yet been taken by the Ambulance Service to do so.

Conclusion: Reasonable measures are in place to prevent unauthorized access to the personal information contained in the supervisors' logs while they are in the area office. However, these measures have not been "defined" and "documented", as required by section 3(1) of Regulation 823 under the Act, as amended by Regulation 395/91.

SUMMARY OF CONCLUSIONS

- The information in question was "personal information" as defined in section 2(1) of the Act.
- The Psychologist's disclosure to the Supervisor was not in accordance with section 32 of the Act.
- The Supervisor's disclosure of the complainant's personal information to the Union Representative was not in accordance with section 32 of the Act.
- Reasonable measures are in place to prevent unauthorized access to the personal information contained in the Supervisors' logs while they are in the area office. However, these measures have not been "defined" and "documented", as required by section 3(1) of Regulation 823 under the Act, as amended by Regulation 395/91.

RECOMMENDATIONS

We recommend that:

1. The Ambulance Service should take steps to ensure that in future all disclosures of personal information are made in accordance with the Act.
2. The Ambulance Service's Privacy Guidelines should include information regarding the measures in place for the safe storage of supervisors' logs, and access to them.

Within six months of receiving this report, the Ambulance Service should provide the Office of the Information and Privacy Commissioner/Ontario with proof of compliance with the above recommendations.

Original signed by:
Ann Cavoukian, Ph.D.
Assistant Commissioner

October 4, 1993
Date



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Commissioner/Ontario
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INVESTIGATION REPORT

INVESTIGATION I93-003M

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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a named municipality (the City).

At 10:30 a.m. on March 28, 1992, the complainant wrote a test entitled the "Entry Firefighter Test" (the test), with the City. The test was one of the steps in the City's firefighter recruitment process. The complainant stated that the test had asked for the applicants' race and sex. The complainant indicated on his test answer sheet that he was a white male.

The City sent the completed test answer sheets to a private company in Sacramento, California, in order to be marked. The complainant scored 82 percent on the test, while the cut-off mark for white males was 85 percent. The cut-off mark for females and visible minorities was 70 percent.

Regarding the test, the complainant stated the following:

1. The City ... did not state their authority, verbal or written, to collect this information on a test score sheet.
2. The information that was supplied to them [the City] was used for a purpose other than what I was told it would be used for.
3. They [the City] released this confidential information to a third party, namely [the named private company], without my permission.

During a meeting with the Compliance Investigator, the complainant outlined an additional concern. He stated that the City's Employment Recruiter and its Secretary of Human Resources had access to the "test analysis printouts", which identified the individuals who had written the test by their name, sex, race and social insurance number (SIN). The complainant questioned the authority of these two individuals to have access to this personal information.

The complainant also stated that while the City had the authority to collect the pre-employment data on its employment application form, it did not have the authority to collect it on the test answer sheet. The complainant also questioned the City's authority to disclose his SIN to the private company.

The complainant thus questioned the City's authority to collect, use and disclose his pre-employment data consisting of his race and sex, and to disclose his SIN to the private company. The complainant also questioned the authority of the City's Employment Recruiter and Human Resources Secretary to have access to the test analysis printouts.

Issues Arising from the Investigation

The following issues were identified as arising from this investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act?
- (B) Did the City have the authority to collect the pre-employment data, in accordance with section 28(2) of the Act?
- (C) Did the City provide notice of its collection, in accordance with section 29(2) of the Act?
- (D) Did the City use the pre-employment data, in accordance with section 31 of the Act?
- (E) Did the City disclose the pre-employment data, in accordance with section 32 of the Act?
- (F) Did the City disclose the SIN, in accordance with section 32 of the Act?
- (G) Did the Employment Recruiter and the Human Resources Secretary obtain access to the test analysis printouts, in accordance with section 3(2) of Regulation 823 under the Act, as amended by Regulation 395/91?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information", in part, as:

recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,

...

- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual; ("renseignements personnels")

We obtained a copy of the complainant's test answer sheet. It contained the following information: his name, sex, race, SIN, and the highest grade he had completed in school.

We also obtained a copy of the test analysis printout. It contained the following information about the complainant: his name, SIN, the letter "M" for male, and the letter "W" for white.

It is our view that the information contained in the complainant's test answer sheet and the test analysis printout met the requirements of paragraphs (a), (b), (c) and (h) of the definition of "personal information", in section 2(1) of the Act.

Conclusion: The information contained in the complainant's test answer sheet and the test analysis printout was personal information, as defined in section 2(1) of the Act.

Issue B: Did the City have the authority to collect the pre-employment data, in accordance with section 28(2) of the Act?

Section 28(2) of the Act states:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity.

The City submitted the following:

Yes, the City solicited the information in question. It was verbally requested at each of the entry level firefighter tests conducted on March 27 and 28, 1992, at which time Fire Chief ... indicated that providing this information was optional.

The City collected this information under the authority of Section 28(2) on the basis that **the collection was necessary to administer a lawfully authorized activity (being a special Employment Equity Program)**. In this regard, please refer to Section 14 of the Human Rights Code ... and the Ontario Human Rights Guidelines on Special Programs (emphasis added)

Section 14(1) of the Ontario Human Rights Code (the Code) states:

A right under Part I is not infringed by the implementation of a **special program** designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights under Part I. [emphasis added]

Part I of the Code addresses "Freedom from Discrimination". It prescribes a number of rights, including the right to equal treatment with respect to employment without discrimination [section 5(1)].

On page two of the "Ontario Human Rights Commission Guidelines on Special Programs", dated May 1991, the following is stated:

... section 28(c) [now section 29(c)] gives the Ontario Human Rights Commission an active mandate to facilitate and encourage the implementation of special programs that comply with section 13 [now section 14]. The Commission, therefore, supports and encourages ... employers ... **to voluntarily adopt special programs.** [emphasis added]

Section 29(c) of the Code states:

It is the function of the Commission,

- (c) to recommend for consideration a special plan or program designed to meet the requirements of subsection 14(1), subject to the right of a person aggrieved by the implementation of the plan or program to request the Commission to reconsider its recommendation and section 37 applies with necessary modifications;

On page five of the "Guidelines on Special Programs", the following is further stated:

No person is obliged to seek an order from the Commission prior to implementing a special program, nor is the Commission obligated to issue an order in response to an application.

In fact, the Commission encourages ... employers ... to review their own operations in light of these guidelines, with a view to **voluntarily** undertaking initiatives aimed at promoting greater equality in our society.

The City also submitted that:

... the [Ontario Human Rights] Commission has considered the City's request for a special program and on March 6, 1989, the Chief Commissioner advised that the proposal meets the definition of a special program under Section 14.

The proposal being referred to above is the City's "Pre-Employment Applicant Tracking Programme". The complainant provided us with a copy of the City's proposal in this regard, dated July, 1988.

The proposal included two sections entitled "Tracking Information To Be Requested" and "Data Collection Process". Under "Tracking Information To Be Requested", the following is stated:

People applying for employment with [the named City] will be requested to provide, on a voluntary and confidential basis, personal information related to their sex, race and disability.

Under "Data Collection Process", the following is stated:

We will be modifying our current application form somewhat by including a 'Recruitment Questionnaire' insert and an envelope addressed to the attention of the Employment Equity Officer. Pre-employment applicant tracking information will be requested via this Recruitment Questionnaire.

The complainant stated that he applied for the firefighter job by completing the employment application form. He also stated that he had completed the recruitment questionnaire, which he returned to the City, by placing it in a locked box, set up for this purpose, in the City's Human Resources Department.

In our view, whether the City initially collected the pre-employment data through the employment application form or on the test is irrelevant to the main issue of whether they had the authority to collect it. We believe that the City had the authority to collect the complainant's pre-employment data on the employment application form because the collection was "necessary" for the proper administration of a lawfully authorized activity, namely -- a special program under section 14(1) of the Ontario Human Rights Code. However, it is also our view that any subsequent collections of the complainant's pre-employment data by the City for the purpose of administering its special program would no longer be "necessary". Accordingly, it is our view that the City's second collection of the complainant's pre-employment data, on the test, did not meet the provisions of section 28(2) of the Act.

Conclusion: The City's first collection of the complainant's pre-employment data (on the employment application form) was in accordance with section 28(2) of the Act, as it was "necessary" for the proper administration of a lawfully authorized activity, namely, the City's special program.

The City's second collection of the complainant's pre-employment data (on the test) was not necessary for the proper administration of the City's special program, since the City was already in possession of that information. Thus, the City did not meet the provisions of section 28(2) of the Act, in this second instance.

Issue C: Did the City provide notice of its collection, in accordance with section 29(2) of the Act?

Section 29(2) of the Act requires an institution to notify the individual to whom the personal information relates of what information the institution is collecting and why. It states:

If personal information is collected on behalf of an institution, the head shall inform the individual to whom the information relates of,

- (a) the legal authority for the collection;
- (b) the principal purpose or purposes for which the personal information is intended to be used; and
- (c) the title, business address and business telephone number of an officer or employee of the institution who can answer the individual's questions about the collection.

In this regard, the complainant stated: "The City ... did not state their authority, verbal or written, to collect this information on a test score sheet".

The complainant also stated that before writing the test, the Fire Chief gave the applicants verbal instructions on how to fill out the test answer sheet. Regarding the pre-employment data, the complainant said the Fire Chief explained that it would be used by the private company, but that no employment decisions would be based on it.

The City submitted:

It would appear that applicants were not informed of the purpose of the collection as was the case at the 8:00 a.m. sitting. Specifically, they were not told that the sex and ethnicity data would be used for statistical purposes, nor was the statement made that no employment decisions would be based on this information.

In the section entitled "Background of the Complaint", we indicated that the complainant had written the test at 10:30 a.m. on March 28, 1992. In its submission, the City stated that the "... applicants [at the 10:30 a.m. sitting] were not informed of the purpose of the collection as was the case at the 8:00 a.m. sitting". On March 28, 1992, the test had been written at 8:00 a.m. and 10:30 a.m., by two different groups of applicants. Prior to receiving this complaint, we had investigated another complaint, also regarding the City's recruitment of firefighters. The complainant in the first complaint (Investigation I92-72M) had written the test at the 8:00 a.m. sitting, at which time the Fire Chief told the applicants that the pre-employment data would be principally used for statistical purposes.

In its submission, as outlined above, the City responded only to section 29(2)(b) of the Act. It stated that the applicants at the 10:30 a.m. sitting were not informed of the purpose of the

collection. The City did not, however, respond to sections 29(2)(a) or (c) of the Act. We have relied on the City's submission to the first complaint, to make a finding in this regard. (Please note that since many of the issues identified in both complaints were similar, the City agreed to have its response to the first complaint applied to the second complaint, where the issues were the same.)

In its earlier submission to Investigation I92-72M, the City stated:

The form of the notice was not strictly in accordance with that outlined in Section 29(2) of the Act to the extent that legal authority was not specified, nor was a contact person indicated who could answer any questions about the collection.

Based on the above, it is our view that the City did not provide proper notice of collection, in accordance with section 29(2) of the Act.

Conclusion: The City did not provide notice of collection, in accordance with section 29(2) of the Act.

Issue D: Did the City use the pre-employment data, in accordance with section 31 of the Act?

Section 31 of the Act prohibits the use of personal information, unless one of three conditions exist. It states:

An institution shall not use personal information in its custody or under its control except,

- (a) if the person to whom the information relates has identified that information in particular and consented to its use;
- (b) for the purpose for which it was obtained or compiled or for a consistent purpose; or
- (c) for a purpose for which the information may be disclosed to the institution under section 32 or under section 42 of the Freedom of Information and Protection of Privacy Act, 1987.

The complainant stated: "The information that was supplied to them [the City] was used for a purpose other than what I was told it would be used for". The complainant believed that the City used the pre-employment data to aid it in its firefighter selection process -- a purpose for which the City had not stated it would use this information. In this regard, the complainant provided us with the City's brochure entitled "Enjoy a challenging and worthwhile career", which contained the following excerpt:

The [named City] is an Equal Opportunity Employer, therefore an individual's age, race, sex, sexual orientation, and/or religion are not factors in our selection process.

Regarding its use of the pre-employment data, the City submitted:

The City used the pre-employment data in the same manner outlined in our submission relative to Investigation #I92-72M, notwithstanding that notice of the purpose of the collection was not given at the 10:30 a.m. sitting. Therefore, I would assume that the same submission and Compliance Officer's recommendations would apply in this instance.

In its submission to Investigation I92-72M, the City stated:

The data was sorted by [the named private company] based on employment equity parameters (see attached Schedule No. 3) in order that the aggregate data could be used for comparison to prior years and to administer (relative to the firefighter hiring process) the Special Employment Equity Program approved by the Human Rights Commission.

There were 1,954 applicants for the firefighter positions, 1,608 of whom wrote entry level test No. 1. The aggregate data compiled by [the named private company] revealed that there was a disproportionately small number of women and visible minority candidates, being 70 of the 1,282 who achieved a pass mark of 70% or better on Test No. 1. Given the number of vacancies to be filled (20-25) and the City's past experience with failure rates on physical-medical tests (30-35%) it was decided that 350 candidates should proceed to Test No. 2. It was also decided that given the small number of minority candidates, all of the 70 who attained a pass mark on Test No. 1 should proceed to Test No. 2. This meant that the number of white male applicants had to be reduced to 280 and this was done by examining the marks on Test No. 1 to determine an appropriate cutoff mark which would yield approximately 280 white male candidates.

The City did not inform the applicants at the 10:30 a.m. sitting of the principal purpose or purposes for which the pre-employment data was intended to be used. Thus, it is our view that the City may not rely on section 31(a) to authorize its use of the pre-employment data, because the complainant could not have consented to a use that he was never told about.

In the absence of a proper notice of collection, and given the statement in the City's brochure that an individual's age, race, sex, sexual orientation and/or religion are not factors in its selection process, it is our view that the City cannot be said to have used the data "for the purpose for which it was obtained or compiled", in accordance with section 31(b) of the Act.

It is also our view that the City did not use the pre-employment data for a "consistent purpose", in accordance with section 31(b). A consistent purpose is one which the complainant would

have reasonably expected. It is our view that in the circumstances of this complaint, where proper notice of collection was not given, and given the statements made in the City's brochure, the complainant would not have reasonably expected the City to use his pre-employment data as criteria in its hiring decision.

We also reviewed section 31(c) of the Act and found that it did not apply to the circumstances of this complaint.

Conclusion: The City did not use the pre-employment data in accordance with section 31 of the Act.

Issue E: Did the City disclose the pre-employment data, in accordance with section 32 of the Act?

Section 32 of the Act prohibits the disclosure of personal information by an institution, except in certain circumstances. (For the full text of section 32, please refer to Appendix A.)

The complainant stated: "They released this confidential information to a third party, namely (the named private company), without my permission".

The City submitted that sections 32(b) and (c) of the Act authorized its disclosure of the applicants' pre-employment data to the private company. We examined each of the City's positions separately.

Section 32(b) of the Act

Section 32(b) of the Act states:

An institution shall not disclose personal information in its custody or under its control except,

- (b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;

The City submitted:

Yes, the answer sheets were disclosed to [the named private company] in order to allow them to computer mark Test No. 1 and to prepare the statistical summary [i.e., the "Test Analysis"]. Staff believe that this was authorized pursuant to Section 32(b) as the information was provided voluntarily. In providing this information, the applicant would have known based on the computer format of the answer sheet, that the data would have to be electronically sorted and scored.

It is our view that while the computer format of the test answer sheet may have suggested to the applicants that the data would have to be electronically sorted and scored, the format did not suggest that a private company in California would be doing the sorting and scoring. In fact, the "Test Security Agreement" between the City and the private company allows for the client or purchaser of the test to score the test.

Thus, it is our view that the City may not rely on section 32(b) of the Act to authorize its disclosure of the pre-employment data to the private company, for marking purposes.

Section 32(c) of the Act

Section 32(c) of the Act states:

An institution shall not disclose personal information in its custody or under its control except,

- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;

In its submission to I92-72M, the City stated: "... the disclosure for tabulation purposes was required to generate the statistics necessary in order to forward the City's Employment Equity Program".

In the circumstances of this complaint, and especially given the absence of a proper notice of collection, it is our view that the City cannot be said to have disclosed the pre-employment data "for the purpose for which it was obtained or compiled", in accordance with section 32(c) of the Act. And, since the City did not inform the complainant of the principal purpose or purposes for which the pre-employment data was intended to be used, it cannot be said that the complainant might reasonably have expected this disclosure. Therefore, it is our view that the City did not disclose the complainant's pre-employment data for a "consistent purpose", in accordance with section 32(c) of the Act.

We reviewed the remaining exceptions listed in section 32 of the Act and found that none applied to this disclosure of personal information. Accordingly, it is our view that the City's disclosure of the personal information was not in accordance with section 32 of the Act.

Conclusion: The City's disclosure of the complainant's pre-employment personal information was not in accordance with section 32 of the Act.

Issue F: Did the City disclose the complainant's SIN, in accordance with section 32 of the Act?

The complainant questioned the City's authority to disclose his SIN to the private company.

In its submission to I92-72M, the City stated: "... the disclosure for tabulation purposes was required to generate the statistics necessary in order to forward the City's Employment Equity Program".

In our view, the City did not need to disclose the applicants' SIN to generate the statistics necessary for its employment equity program. We reviewed section 32 of the Act and found that none of the exceptions listed applied to this disclosure. Accordingly, it is our view that the City's disclosure of this personal information was not in accordance with section 32 of the Act.

Conclusion: The City's disclosure of the complainant's social insurance number was not in accordance with section 32 of the Act.

Issue G: Did the Employment Recruiter and the Human Resources Secretary obtain access to the test analysis printouts, in accordance with section 3(2) of Regulation 823 under the Act, as amended by Regulation 395/91?

Section 3(2) of Ontario Regulation 823 states:

Every head shall ensure that only those individuals who need a record for the performance of their duties shall have access to it.

The City confirmed that the Employment Recruiter and the Information Clerk (i.e., the Secretary of Human Resources) had access to the test analysis printout. It also submitted the following:

It is the City's position that the above staff members required access to information in the test analysis printout in order to perform their respective duties. The Employment Recruiter is involved in all stages of the hiring process including the Selection Committee which decides who will proceed to the next level of testing based on test performance and the parameters of the City's Employment Equity Program

The Information Clerk performs all administrative duties for the Employment Recruiter throughout the entire testing process. These include advising any of the 1,600 applicants of their test results where these have been requested by them either in person or in writing.

We concur with the City that the Employment Recruiter and the Information Clerk needed access to the test analysis printouts for the performance of their duties.

Conclusion: The Employment Recruiter and the Information Clerk obtained access to the test analysis printouts, in accordance with section 3(2) of Ontario Regulation 823.

Other Matters

In Issue F we concluded that the City's disclosure of the complainant's social insurance number was not in compliance with section 32 of the Act.

With respect to social insurance numbers, we would also like to draw the City's attention to the IPC's most recent publication of "Practices" dated April, 1993 (copy enclosed). In this issue, we addressed the collection, retention, use, and disclosure of social insurance numbers. Our main purpose was to heighten awareness of the privacy implications associated with the SIN, when used as a unique personal identifier.

SUMMARY OF CONCLUSIONS

- The information contained in the complainant's test answer sheet and the test analysis printout was personal information, as defined in section 2(1) of the Act.
- The City's first collection of the complainant's pre-employment data (on the employment application form) was in accordance with section 28(2) of the Act, as it was "necessary" for the proper administration of a lawfully authorized activity, namely, the City's special program.

The City's second collection of the complainant's pre-employment data (on the test) was not necessary for the proper administration of the City's special program, since the City was already in possession of that information. Thus, the City did not meet the provisions of section 28(2) of the Act, in this second instance.

- The City did not provide notice of collection, in accordance with section 29(2) of the Act.
- The City did not use the pre-employment data in accordance with section 31 of the Act.
- The City's disclosure of the complainant's pre-employment personal information was not in accordance with section 32 of the Act.
- The City's disclosure of the complainant's social insurance number was not in accordance with section 32 of the Act.
- The Employment Recruiter and the Information Clerk obtained access to the test analysis printouts, in accordance with section 3(2) of Ontario Regulation 823.

RECOMMENDATIONS

1. With regard to the third condition of section 28(2) of the Act, we recommend that the City collect personal information only in those instances where the collection is truly "necessary" to the proper administration of a lawfully authorized activity.
2. Except where notice has been waived or section 29(3) of the Act applies, we recommend that each time the City collects personal information, it inform the individual to whom the information relates of the following, pursuant to section 29(2) of the Act:
 - the legal authority for the collection;
 - the principal purpose(s) for which the information is to be used; and
 - the address and telephone number of an official within the City who may answer questions about the collection.
3. We recommend that the City use personal information only in accordance with section 31 of the Act.
4. Since the named private company has physical possession of the test answer sheets containing the applicants' pre-employment personal information, we recommend that the City establish a formal written agreement with the company in Sacramento, California, requiring that it comply with the applicable privacy provisions of the Act.
5. As an alternative to recommendation #4, the City may in future wish to consider removing the personal identifiers from all test answer sheets, prior to disclosing this information to the private company.
6. We recommend that the City not disclose any personal information unless one of the exceptions to the prohibition against disclosure, as cited in section 32 of the Act, applies.

Since the above recommendations are the same as those contained in Investigation I92-72M, the City should provide the Office of the Information and Privacy Commissioner with proof of compliance with these recommendations, at the same time that it responds to I92-72M.

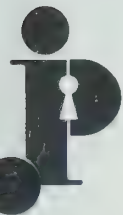
Original signed by: _____
Ann Cavoukian, Ph.D.
Assistant Commissioner

August 5, 1993

Date

APPENDIX A

32. An institution shall not disclose personal information in its custody or under its control except,
- (a) in accordance with Part I;
 - (b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;
 - (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
 - (d) if the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and if the disclosure is necessary and proper in the discharge of the institution's functions;
 - (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or treaty;
 - (f) if disclosure is by a law enforcement institution,
 - (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
 - (ii) to another law enforcement agency in Canada;
 - (g) if disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
 - (h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification is mailed to the last known address of the individual to whom the information relates;
 - (i) in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased;
 - (j) to the Minister;
 - (k) to the Information and Privacy Commissioner;
 - (l) to the Government of Canada or the Government of Ontario in order to facilitate the auditing of shared cost programs.



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INVESTIGATION REPORT

INVESTIGATION I93-004M

A MUNICIPAL CITY



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a Municipal City (the City).

The complainant is a member of the City's Fire Department. A Professional Fire Fighters' Association (the Association) is representing the interests of the complainant for purposes of this investigation.

At a fire scene in December 1992, statements were made by certain fire fighters regarding possible staff reductions in the fire department. A member of the public at the fire scene registered a complaint with a City councillor regarding these statements saying they were unprofessional and unethical. As a result of this incident, the Mayor of the City appointed the City Auditor to investigate the matter along with the Deputy Fire Chief. A preliminary investigation report (the report) was produced which identified the complainant as one of the fire fighters who had made some of the statements in question. The City stated that this report was stamped "confidential". No additional fire fighters were identified.

The press obtained the information in the report and contacted the complainant for a statement. The press subsequently printed information from the report in a newspaper article.

The Association has submitted that the City disclosed the report, containing the complainant's personal information, contrary to section 32 of the Municipal Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of Act?
- (B) Was the disclosure to the press in accordance with section 32 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of Act?

Section 2(1) states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The information in question was a five page report written by the City Auditor containing the results of the investigation of the complaint to the City councillor. It identified the complainant as having made certain statements to the tenants at the fire scene. It also gave details of the interview conducted by the City Auditor with the complainant.

In our view, the report contained information which met the requirements in paragraph (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was personal information as defined in section 2(1) of the Act.

Issue B: Was the disclosure in accordance with section 32 of the Act?

The City has informed us that it cannot determine who gave the information and/or the report to the press. The City has advised that once the investigation was completed, the report in question was delivered to the Fire Chief's Office on December 31, 1992. This copy was filed in a locked drawer where only the Deputy Chief had access. The report was also sent to the Chief Administrative Officer of the City (CAO), on December 31, 1992. On January 4, 1993, the report was sent to the Mayor of the City and each member of Council. The City informed us that the report was also sent to the Association and on January 4 or 5, 1993, a copy was given to the individual who filed the complaint initially. The Association informed us that it received the report on January 11, 1993. The City Auditor, who wrote the report, filed his copy in the CAO/Audit Records Office where only Audit staff and the records clerk had access.

According to the City, therefore, the City Auditor, the Deputy Fire Chief, the Fire Chief, the CAO, the Mayor, all members of the City Council, the Association, and the individual who filed the initial complaint with the City councillor, all had copies of the report prior to the date of the newspaper article, which was January 5, 1993.

We requested that the City contact each of the above identified individuals, excluding the individual who filed the initial complaint, to inquire whether they had disclosed the confidential report or the information in the report to any other individual, including the press. The City informed us that all of the individuals completed and signed forms which indicated that they had not disclosed the report or its contents to any other individual.

We contacted the individual who filed the initial complaint with the City councillor to determine whether she had provided a copy of the report to the press. She informed us that she was out of the province until January 4, 1993. She went back to work on January 5, 1993, and, at that time, saw a copy of the report and the newspaper article. She did not have a copy of the report before the newspaper article was printed on January 5, 1993.

Since none of the individuals who were identified as having access to the report, acknowledged disclosing the report or the information it contained to the press, we were unable to determine who disclosed the personal information. Therefore, we were unable to establish conclusively if the City made the disclosure.

We have, however, examined the provisions of section 32 of the Act which permits disclosure in specific circumstances. It is our view that if the City had disclosed the personal information to the press, the disclosure would not have been in accordance with section 32 of the Act.

Conclusion: We were unable to determine who disclosed the personal information. However, if the City had disclosed the personal information, the disclosure would not have been in accordance with section 32 of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was personal information as defined in section 2(1) of the Act.
- We were unable to determine who disclosed the personal information. However, if the City had disclosed the personal information, the disclosure would not have been in accordance with section 32 of the Act.

RECOMMENDATIONS

In our draft report we stated that although we were unable to determine if the City disclosed the personal information to the press, we would nevertheless like to make the following recommendation.

The City should take steps to ensure that with respect to investigations of this nature, it is clearly communicated to those who have access to the investigative report that it remain confidential, and that any disclosure of personal information should be made in accordance with the provisions of the Act. This advice should be reflected in the City's procedures for conducting such investigations.

In reply to this recommendation, the City advised that:

1. The City Auditor has initiated guidelines to his staff on the procedures to be followed in the handling of future internal investigation reports. These include:

Reports should only contain personal information where absolutely necessary.

When a report does contain personal information, its circulation should be as restricted as possible; and such circulation should be approved specifically by the City Auditor or the Director of Audit Services.

Each report should have on its cover page a statement that it does contain personal information and that the disclosure of such information is governed by the Act.

Each page of the report which contains personal information should incorporate a similar advisory/cautionary statement.

Personal information collected in the course of audits or investigations, whether incorporated in reports or not, must be collected, handled and stored with full confidentiality and in accordance with the requirements of the Act.

2. Each investigative report will have on its cover page a statement that it does contain personal information and that the disclosure of such information is governed by the Act.
3. When the Commissioner's final report is received, a memo will be issued to all Departments and Council advising them of the Commissioner's report and recommendation. Guidelines similar to those developed for the City Auditor's Department will be incorporated into the City's Municipal Freedom of Information and Protection of Privacy Guidelines and Procedure Manual.
4. Departments will be reminded of previous communication sent to them with suggested wording to be used to advise members of Council when they are being provided with information with potential exemptions under the Act.
5. The City Auditor has made a clear indication of willingness to comply with the recommendation in the Commissioner's report and avoid inappropriate disclosure in the future.

We have carefully considered the City's submissions and are satisfied with its comprehensive response to our recommendation.

Original signed by:
Susan Anthistle
Compliance Review Officer

July 28, 1993
Date



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INVESTIGATION REPORT

INVESTIGATION I93-008M

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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a named municipal city (the City).

The complaint was that the City had failed to provide proper notice for the collection of personal information on its License Renewal Application (the Application), as it pertained to taxicab drivers and owners, contrary to the Municipal Freedom of Information and Protection of Privacy Act (the Act). The complainant was also concerned that the City was collecting financial and criminal record information about taxi drivers and owners without the proper legal authority to do so.

The complainant was specifically concerned with questions one, two and three on the Application. These questions were related to bankruptcy proceedings, outstanding judgements, and criminal convictions.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information requested in the Application "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Did the City have the authority to collect the personal information, in accordance with section 28(2) of the Act?
- (C) Did the City provide notice of its collection, in accordance with section 29(2) of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information requested in the Application "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information", in part, as:

recorded information about an identifiable individual, including,

- (b) information relating to the education or the medical, psychiatric, psychological, **criminal** or employment history of the individual or information relating to **financial** transactions in which the individual has

been involved, (emphasis added)

The complainant provided us with a copy of the Application. It contained questions about criminal and financial matters relating to the applicant.

It is our view that the information requested in the Application met the requirements of paragraph (b) of the definition of "personal information" in section 2(1) of the Act.

Conclusion: The information requested in the Application was personal information, as defined in section 2(1) of the Act.

Issue B: Did the City have the authority to collect the personal information, in accordance with section 28(2) of the Act?

Section 28(2) of the Act states:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or **necessary to the proper administration of a lawfully authorized activity**. (emphasis added).

We have examined the City's collection of criminal record and financial information separately, below.

Criminal Record Information

The City referred us to Bylaw 142-89, the Public Vehicle Licensing By-law, section 18(3), which states:

Grounds for Refusal to Issue or to Renew a License

18. An applicant is entitled to be licensed and a licensee is entitled to have his licence renewed except where:

- (3) the issuance of the licence or renewal of the license would be contrary to the public interest;

The City stated that the legal authority for the above provision is found in the Municipal Act, RSO 1990, c.M.45, s.232 as it relates to the regulation of the owners and drivers of cabs and other vehicles used for hire. Section 232 of the Municipal Act states in part that:

By-laws may be passed by the councils of towns, villages and townships and by police services boards of cities:

1. For licensing, regulating and governing ... owners and drivers of cabs ...

The City also pointed to section 109 of the Municipal Act as providing the general authority to municipalities for the power to licence:

- (1) The power to license any trade, calling, business or occupation or the person carrying on or engaged in it includes the power to prohibit the carrying on of or the engaging in it without a licence.
- (2) The power to license, regulate or govern places or things includes a power to license, regulate or govern the trades, callings or business for which such places or things are used and the persons carrying on or engaged in them.

Having reviewed By-law 142-89 and the relevant sections of the Municipal Act, it is our view that the licensing of taxicab owners and drivers was a "lawfully authorized activity".

In regard to the Application's question concerning criminal convictions, however, the complainant felt that the City should not have requested information about convictions for which a pardon had been granted.

As well, while the complainant agreed that the City had an obligation to ensure that the public was under no threat from a taxicab owner or driver, he felt that only specific criminal convictions should be collected, e.g. crimes of violence, and that the City's request for information concerning **all** criminal convictions elicited confidential information at the expense of new applicants and licensees.

In response to the complainant's concern regarding pardoned convictions, the City revised its Application to read "Since you were last licensed by this licensing section, have you been convicted under any law of any country, province, or state thereof, of any criminal offence or any other offence **for which a pardon has not been granted?**" (emphasis added). The City sent us a copy of the revised form, and advised us that it is now in general use.

However, the revised form did not address the complainant's concern regarding the City's collection of information on **all** criminal convictions (with the exception of those for which a pardon had been granted). In support of its stance that applicants should disclose details of all criminal convictions for which a pardon had not been granted, the City contended that, under the provisions noted above, it is authorised to regulate licences based on past conduct of applicants "as a measure of reasonable grounds for the belief that an applicant will carry on the licensed activity in accordance with the law and with integrity and honesty."

The City also argued that section 18(3) of By-law 142-89 provides that a license not be issued if such issuance or renewal would be contrary to the public interest. The City indicated that collection of only specific criminal offenses, such as crimes of violence, might not provide

sufficient information to determine whether the public interest is best served through the issuance or renewal of a particular license. The City further stated that while not all criminal convictions would be a deterrent to the issuance of a license, it is important that the City be aware of the past conduct of an applicant who desires to perform an important public service function in the community.

Having reviewed By-law 142-89, the relevant sections of the Municipal Act and the above submissions, it is our view that the City needs to collect information about an applicant's convictions for all criminal offenses for which a pardon has not been given, in order to fulfil its role in protecting the public interest. It is thus our view that the City had the authority to collect information relating to criminal convictions, from both taxicab owners and drivers, as it was necessary to the proper administration of taxicab licensing.

Conclusion: The City's collection of criminal record information from taxicab owners and drivers was in accordance with section 28(2) of the Act.

Financial Information

The City contended that collection of the financial information was "necessary to the proper administration of a lawfully authorized activity".

The City stated that Bylaw 142-89 contains the relevant section for the collection of financial information necessary for the purpose of regulating licenses. Section 18(1), in particular, states:

Grounds for Refusal to Issue or to Renew a Licence

18. An applicant is entitled to be licensed and a licensee is entitled to have his licence renewed except where:
 - (1) having regard to his financial position, the applicant or licensee cannot reasonably be expected to be financially responsible **in the conduct of the business which is to be licensed or is licensed;** (emphasis added)

As previously mentioned, based on By-law 142-89 and sections 109 and 232 of the Municipal Act, it is our view that the licensing of taxicab owners and drivers was a "lawfully authorized activity".

The complainant asserted, however, that the collection of financial information was not "necessary" to the proper administration of this activity. He stated that the financial information requested in the Application was irrelevant to the renewal of an owner's or driver's licence, and that the City's by-law gave the City unlimited discretion to collect whatever financial information

it deemed necessary for the purpose of regulating licensees.

The complainant also felt that other personal information (undefined) collected in the Application should satisfy the need for effective licensing administration.

To determine whether the City's collection of this financial information was "necessary" to the licensing of taxicab owners and drivers, we asked the City the following questions:

1. Why is financial responsibility relevant **in practice** to the licensing of drivers and owners?
2. What problems would the City or public experience as a consequence of drivers or owners being or becoming insolvent?
3. How many licenses are refused as a consequence of collecting information on the financial status of the applicant?

The City responded that they are aware of only a few problems (not specified) with drivers and owners experiencing financial problems. The City believed that this success could be attributed to the fact that the applicant is asked about his/her financial well-being at the time of the application.

The City further stated that financial responsibility is relevant to the licensing of drivers, as they are required to satisfy their payments to the owner of the taxicab and brokerage. In our view this item may be important for the owner, but is not necessarily a concern of the City.

The City advised us that in the case of owners, the information is vital because the licence being issued has a monetary value on the open market. The City stressed that even though licenses may be transferred between parties or owners, the licences are considered the property of the City. However, the complainant stated that it was his view that agreements of purchase and sale are strictly private matters.

The City reiterated since it retains the ownership of the license at all times, it is the ultimate "owner". The City stated that because it is cognizant of its responsibility to the travelling public and to the taxicab industry, it has a keen interest in the financial status of the licensee.

We understand that the concern of the City is that, if a licensee gets into financial difficulties, this may disrupt the provision to the public of the taxi service which has been licensed. The City gave a specific example of a case where, because the holder of a taxicab owner's licence was bankrupted, the licence plate was not used for 2 1/2 years.

The complainant contended that the example cited by the City was misleading, and that the licence was in fact actively operated through a lease agreement with a long-standing member of the industry during much of the period in question. The City's rebuttal was that during the

entire investigation and court deliberation period, the plate was in the possession of the City's License Manager.

Leasing of Licenses

We have determined that the leasing of licenses is not uncommon.

Section 61(2) of the by-law states:

- (2) A licensed owner shall file with the licensing section all documents required to report any change, including, if applicable, a lease or sub-lease agreement or similar documentation relating to ownership or vehicle operation ...

Therefore, the by-law specifically contemplates leases, which must be filed with the City.

It seems likely that, in at least some cases, when the City talks about licensing drivers, those drivers may include people who drive taxicabs, but who are also lessees of the taxi licence.

One of the implications of drivers also being lessees is that, as a taxi licence has been held to be personal property, the lease of such a licence may also be personal property. If the lessee gets into financial difficulties, the effect on the provision of the taxi service to the public could be much the same as where the owner has financial difficulties (depending on the terms of the lease agreement).

In our view, the questions on the Application concerning bankruptcy status and judgement debts are more relevant to taxicab licence owners, who conduct the business of providing a taxicab service, than to taxicab drivers (at least where the driver is not also a lessee of the owner's licence). The City advised us that of 1,487 licensed drivers, 696 drivers (46%) are lessees, partners, or owner/drivers. As such, these 696 individuals are lessees, with an interest in taxicab plates.

The complainant challenged the City's figures. He stated that there are only 472 taxicabs licensed by the City, and that the number of owners is considerably less than 472, since many control more than one licence. In response, the City stated that there is a distinction between plates and licences issued, and that while the number of taxi plates is 472, the actual number of licensed drivers, including owners, lessees and sub-lessees, is 1,487.

Whatever the actual number may be, in the case of drivers, who are also lessees of licences, and owners, we accept the City's argument that for these individuals conducting a business, and holding a property interest in taxicab plates, financial responsibility is an important consideration when renewing or granting licences. Therefore, we consider the collection of such basic financial information as bankruptcy status and outstanding judgements to be **necessary** to the proper administration of taxicab licensing.

However, non-lessee drivers are not conducting a "business which is to be licensed or is licensed" by the City. It is thus our view that collection of the financial information from non-lessee drivers was not necessary to the proper administration of taxicab licensing.

Conclusion: The City's collection of financial information from drivers, who are also lessees of licences, and owners was in accordance with section 28(2) of the Act.

The City's collection of financial information from non-lessee drivers was not in accordance with section 28(2) of the Act.

Issue C: Did the City provide notice of its collection, in accordance with section 29(2) of the Act?

Section 29(2) of the Act states:

If personal information is collected on behalf of an institution, the head shall inform the individual to whom the information relates of,

- (a) the legal authority for the collection;
- (b) the principal purpose or purposes for which the personal information is intended to be used; and
- (c) the title, business address and business telephone number of an officer or employee of the institution who can answer the individual's questions about the collection.

The City acknowledged that proper notice was not provided on the Application. However, in response to this complaint, the City revised its application form. It now contains a statement which complies with section 29(2) of the Act.

Conclusion: The City did not provide notice of its collection, in contravention of section 29(2) of the Act.

SUMMARY OF CONCLUSIONS

- The information requested in the Application was personal information, as defined in section 2(1) of the Act.
- The City's collection of criminal record information from taxicab owners and drivers was

in accordance with section 28(2) of the Act.

- The City's collection of financial information from drivers, who are also lessees of licences, and owners was in accordance with section 28(2) of the Act.
- The City's collection of financial information from non-lessee drivers was not in accordance with section 28(2) of the Act.
- The City did not provide notice of its collection, in contravention of section 29(2) of the Act.

RECOMMENDATION

We acknowledge that the City has since provided proper notice on its Application.

We recommend that the City discontinue the collection of financial information, i.e. the two questions concerning bankruptcy status and outstanding judgements, from non-lessee drivers. To achieve this, the City may wish to revise its Application, such that only drivers, who are also lessees of licences, and owners are instructed to complete questions one and two.

Within six months of receiving this report, the City should provide the Office of the Information and Privacy Commissioner/Ontario with proof of compliance with the above recommendation.

Original signed by: _____
Susan Anthistle
Compliance Review Officer

October 26, 1993

Date



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INVESTIGATION REPORT

INVESTIGATION I93-009M

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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a municipal school board (the Board).

The complainant had been employed by the Board on a casual basis as an occasional teacher and had completed various short-term occasional teaching assignments between August, 1989 and December, 1992. In October, 1992, he applied for a long-term occasional position with the Board, and was selected as the successful candidate out of the job competition, in December, 1992. He was then terminated from this long-term occasional contract in January of 1993.

The complainant was asked by the Assistant to the Board's Staffing Superintendent to provide the Board with the names of individuals who could be contacted by the Board for reference purposes. The Assistant said that the complainant told her the names of seven individuals, but he was uncertain if they were still employed at their respective boards, or of their current whereabouts. She recorded the list of referees on a page from a notepad, and told him that they would be contacted. She then passed the list on to the Staffing Superintendent.

The Staffing Superintendent found that of two of the referees for the [named board], one was not known at the board, and one was a retiree. However, she wished to obtain a reference from the [named] board, and later, at a meeting of Staffing Superintendents, in a personal conversation, the Staffing Superintendent asked the Superintendent of the [named board] if there was someone he might know whom she could contact to obtain a reference for the complainant. He told the Staffing Superintendent that the complainant's contract had been terminated by his board, and that an arbitration decision was available. He did not provide any details to the Staffing Superintendent.

The Staffing Superintendent had not been previously aware that the complainant's prior employment with the [named board] had been terminated for unsatisfactory performance. She subsequently received a copy of the arbitration decision from the Board's lawyer. The arbitration decision stated in part:

Thus, it is the conclusion of this board of arbitration that the Board was correct in its action of dismissal and further that there is no evidence before this board which could justify reinstatement...

We are concerned that respect for the spirit of the document [the collective agreement] was not reflected by the speed with which the administration and the Board acted in the last week of April and the month of May. That part of the process is seen by us as "unjust" and warrants a remedy for the grievor which remedy can only be by way of compensation since it would be wrong to reinstate.

The grievor in his appearance before us does not present as one who is able or prepared to listen and abide suggestions for improvement and based on the evidence before us it would not be in the best interests of the student to place him in a classroom.

After reading the arbitration decision, the Staffing Superintendent concluded that it was inappropriate to continue the complainant's long-term occasional assignment or to keep his name on the Board's occasional teacher list.

The complainant received a letter dated January 11, 1993, from the Board's Staffing Superintendent. The letter stated:

I have recently become aware of an arbitration decision confirming the actions of the (named school board) in terminating your contract for unsatisfactory teaching performance.

The Chair of the Arbitration Board concluded "it would not be in the best interests of the students to place him in a classroom". The [Board] concurs with this judgement; accordingly I am not prepared to employ you as an occasional teacher. Had this information been made available to the Board earlier, you would have not been accepted on our long-term occasional teacher list, and of course, would not have been an acceptable applicant for a long-term occasional assignment.

Accordingly, your long-term occasional assignment at [named school] is hereby terminated, effective today, and your name is hereby removed from our list of occasional teachers.

The complainant believed that his privacy had been breached when the Board collected information about him from the arbitration decision, and used it to terminate his contract and remove his name from its list of occasional teachers. In his view, the information had been obtained surreptitiously, and had been used without his authorization. He was also concerned that medical information in the arbitration decision had been used by the Board in making its decisions. He stated that he had worked for the Board since 1989 as an occasional teacher, with excellent performance reports.

The Staffing Superintendent stated that she had not taken any medical information from the arbitration decision into account in making the termination decision. Although she had considered the complainant's satisfactory performance reviews, her decision had been influenced most by the statement in the arbitration decision that, "it was not in the best interests of the students to place him in the classroom".

Issues Arising from the Investigation

- (A) Did the arbitration decision contain the complainant's "personal information" as defined in section 2(1) of the Act?
- (B) Did section 27 of the Act apply to the record of the arbitration decision?
- (C) Was the personal information collected in accordance with section 28(2) of the Act?
- (D) Was the personal information collected in accordance with section 29(1) of the Act?
- (E) Did the Board provide proper notice for the collection of the personal information in accordance with section 29(2) of the Act?
- (F) Was the personal information used in accordance with section 31 of the Act?

In its response to our draft report, the Board raised an additional issue by requesting that the compliance investigation process be stayed pending the conclusion of grievance/arbitration proceedings concerning the Board's decisions to terminate the complainant's long-term occasional teaching assignment and remove his name from its list of occasional teachers.

In making its request, the Board cited several reasons including: the prejudicial effect that our report might have on the grievance/arbitration proceeding; the principle that multiple legal proceedings ought to be discouraged; section 9 of the Ontario Evidence Act; and the "tenor" of our investigation reports.

We have carefully considered the Board's request but are not persuaded that a stay is warranted in the circumstances of this case, for the following reasons:

First, although the privacy investigation and grievance arbitration proceedings arise from similar facts, they do not address the same issues. Our investigation addresses whether the Board has complied with the privacy protection provisions of the Act, while the grievance/arbitration is concerned with whether the Board acted appropriately, in accordance with its collective agreement, in terminating the complainant's long-term occasional teaching assignment and removing his name from its list of occasional teachers.

Secondly, our investigation report and the recommendations it contains are not binding on the decision maker in the arbitration. The investigation report simply sets out our views on whether the Board had complied with the privacy protection provisions of the Act.

Section 9 of the Ontario Evidence Act provides a witness who gives an answer in one proceeding protection against that answer being used or received in evidence in a subsequent proceeding, if he has objected to answering the question because it might tend to incriminate him, or tend to establish his liability in a civil proceeding. Even assuming that the Ontario Evidence Act applies to our investigation report, we are unable to see how it supports the granting of a stay in the circumstances of this particular case.

Finally, in our view, the Board has failed to demonstrate specifically how its position in the arbitration would be prejudiced by the issuance of our final report. Therefore, after considering all of the circumstances, including the complainant's interest in an expeditious resolution of his privacy complaint, we are not satisfied that a stay is warranted.

RESULTS OF THE INVESTIGATION

Issue A: Did the arbitration decision contain the complainant's "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information" as recorded information about an identifiable individual, including, but not limited to:

...

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

...

- (e) the personal opinions or views of the individual except if they relate to another individual,

...

- (g) the views or opinions of another individual about the individual, and

- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual

In our view, the arbitration decision contained the complainant's "personal information" as defined in paragraphs (b), (e), (g), and (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The arbitration decision contained the complainant's "personal information" as defined in section 2(1) of the Act.

Issue B: Did section 27 of the Act apply to the record of the arbitration decision?

Section 27 of the Act states:

This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public.

In other words, the privacy provisions of Part II of the Act do not apply to personal information that is maintained for the purpose of creating a record that is available to the general public.

The Freedom of Information and Protection of Privacy Act (the provincial Act) contains an equivalent provision, which is expressed in identical terms (section 37 of the provincial Act).

It is our view that personal information maintained by an institution may be excluded from the application of Part II of the Act and Part III of the provincial Act only if the personal information is maintained by that institution for the purpose of creating a record which is available to the general public. **Other** institutions cannot claim the benefit of the exclusion for the same personal information, unless they, too, maintain the personal information for the purpose of making it available to the general public.

The Board, in response to our draft report, noted that the above interpretation is somewhat different from the interpretation contained in earlier privacy investigations dealing with section 27. While recognizing that consistency is an important goal, we also believe that the process of interpreting and applying a statute is not a static exercise. Privacy protection is a continuously evolving field. In our view, it is important not to take a rigid approach to this legislation. Over time, as we have the chance to apply the Act in a variety of factual situations, we may refine and sometimes reconsider earlier positions in order to meet the changing needs of our information society.

Section 27 is a case in point. In our view, the narrower interpretation set out in this report is not only reasonable but also more in keeping with one of the fundamental goals of the Act -- namely, "to protect the privacy of individuals with respect to personal information about themselves held by institutions".

In the circumstances of this case, the record in question is an arbitration decision made under the School Boards and Teachers Collective Negotiations Act. We found that the Education Relations Commission (the ERC), which is an institution under the provincial Act, maintains a library of copies of arbitration decisions made under the School Boards and Teachers Collective Negotiations Act, and makes these decisions available to the public. The ERC's library is available to members of the public who visit its offices, and summaries of arbitration decisions are routinely forwarded to school boards and teaching federations. In our view, arbitration decisions are the type of public record contemplated in section 37 of the provincial Act. Therefore, in disclosing the arbitration records, the ERC may rely on section 37 to exclude them from falling under the privacy provisions of Part III of the provincial Act.

However, the Board collected the personal information in the record of the arbitration decision with a specific individual in mind (the complainant), for the purpose of furthering its reference check on the complainant. The Board's purpose was not to create a record that was available to the general public. Therefore, it is our view that the Board could not rely on section 27 to exclude the arbitration record from the privacy provisions of Part II of the Act.

Conclusion: Section 27 of the Act did not apply to the record of the arbitration decision.

Issue C: Was the personal information collected in accordance with section 28(2) of the Act?

Section 28(2) of the Act prohibits the collection of personal information unless one of three conditions exist. This section states:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or **necessary to the proper administration of a lawfully authorized activity** [emphasis added].

The Board's authority to appoint qualified teachers for schools that it operates is set out in section 170(12) of the Education Act. Collecting personal information during job competitions and subsequent reference checks affords the Board the opportunity to assess the qualifications of the candidates and verify the candidates' experience and qualifications. In our view, collecting personal information for job competitions and subsequent reference checks is necessary in order for the Board to properly administer its lawfully authorized activity of hiring qualified teachers to fill available positions. Therefore, we conclude that the Board's collection was necessary to the proper administration of a lawfully authorized activity, and was in accordance with section 28(2) of the Act.

Conclusion: The Board collected the complainant's personal information in accordance with section 28(2) of the Act.

Issue D: Was the personal information collected in accordance with section 29(1) of the Act?

Section 29(1) of the Act prohibits an institution from collecting personal information other than directly from the individual unless certain conditions are met. This section states in part:

(1) An institution shall collect personal information only directly from the individual to whom the information relates unless,

- (a) the individual authorizes another manner of collection;
- (b) the personal information may be disclosed to the institution concerned under section 32 or under section 42 of the Freedom of Information and Protection of Privacy Act, 1987;

Although the complainant had given the Board verbal authorization to collect information about him from his referees, he had not authorized the Board to collect his personal information from the arbitration record. Since the complainant had not authorized another manner of collection, paragraph (a) did not apply.

Paragraph (b) provides that personal information may be collected from a source other than the individual if the information may be disclosed to the institution under section 42 of the provincial Act. In order for the Board to be able to collect the personal information from the ERC, the ERC would have had to be able to disclose the personal information to the Board under section 42 of the provincial Act.

We have noted in the discussion of Issue B above, that in our view, section 37 of the provincial Act excludes records of arbitration decisions maintained by the ERC from the application of Part III of the provincial Act, including the restrictions on disclosure set out in section 42. Therefore, the ERC's disclosure of the personal information in the record of the arbitration decision could not contravene the restrictions on disclosure set out in section 42. The ERC is permitted to disclose the information to the Board since the ERC is maintaining the personal information for the purpose of creating a record available to the general public.

In our view, as the ERC's disclosure of the arbitration decisions did not contravene section 42, the disclosure can be said, for the purposes of section 29(1)(b) of the Act, to be a disclosure that may be made under section 42 of the provincial Act. Therefore, the collection of the personal information by the Board was made in accordance with section 29(1) of the Act.

Conclusion: The collection was made in accordance with section 29(1) of the Act.

Issue E: Did the Board provide proper notice for the collection of the personal information in accordance with section 29(2) of the Act?

Section 29(2) of the Act provides that if personal information is collected on behalf of an institution, the head shall inform the individual to whom the information relates of,

- (a) the legal authority for the collection;
- (b) the principal purpose or purposes for which the personal information is intended to be used; and
- (c) the title, business address and business telephone number of an officer or employee of the institution who can answer the individual's questions about the collection.

In response to the question of whether the Board had provided notice for the collection of the personal information for the job competition and subsequent reference checks, the Board stated that notice had been provided on the job posting, and drew our attention to the wording at the bottom of the posting, which stated:

Confidentiality: personal information provided by applicants will be used for the purpose of this competition only and will be protected in accordance with the Municipal Freedom of Information and Protection of Privacy Act.

We found that the above statement does not contain all the elements set out in section 29(2). There is no reference to the Board's legal authority to collect the personal information, or to the title, business address, and business telephone number of an individual who could answer an individual's questions about the collection. The purpose of the collection is stated in a limited manner (i.e. for the purpose of this competition only). Therefore, in our view, the Board did not provide proper notice in accordance with section 29(2) of the Act for the collection of personal information for the job competition and subsequent reference checks.

Conclusion: The Board did not provide proper notice for the collection of personal information in accordance with section 29(2) of the Act.

Issue F: Was the personal information used in accordance with section 31 of the Act?

Section 31 of the Act sets out the conditions under which personal information may be used by an institution. It states:

An institution shall not use personal information in its custody or under its control except,

- (a) if the person to whom the information relates has identified that information in particular and consented to its use;
- (b) for the purpose for which it was obtained or compiled or for a consistent purpose; or
- (c) for a purpose for which the information may be disclosed to the institution under section 32 or under section 42 of the Freedom of Information and Protection of Privacy Act, 1987.

The Board's position was that it had used the personal information it collected for a consistent purpose, in accordance with section 31(b) of the Act, when it used the information to 1) remove the complainant's name from the Board's list of occasional teachers, and 2) terminate the complainant's long-term occasional contract. Section 33 of the Act states:

The purpose of a use or disclosure of personal information **that has been collected directly from the individual** to whom the information relates is a consistent purpose under clauses 31 (b) and 32 (c) only if the individual might reasonably have expected such a use or disclosure [emphasis added].

In this case, the personal information at issue was not collected directly from the complainant; it was collected indirectly from the record of the arbitration decision the Board had obtained. Accordingly, the question of whether the use was for a consistent purpose could not be determined by the complainant's reasonable expectation. In our view, in cases such as this, where personal information is collected indirectly, the question of whether the use was for a consistent purpose should be determined by considering whether the Board's use of the personal information was reasonably compatible with the purpose for which it was collected.

In response to our draft report, the Board stated that it did not necessarily disagree with the view taken above. However, the Board raised the issue of whether we had applied an "identical" purpose test, rather than a consistent purpose test in the circumstances of this complaint (i.e. that we had interpreted a "consistent" purpose as being an "identical" purpose). The result of using such an interpretation would be that unless the use of the information was identical to the

intended purpose stated in the notice, the use would not be reasonably compatible with the original purpose; the use would not then be for a consistent purpose, and would contravene the Act.

Use 1) In our draft report, when setting out our conclusion as to whether the personal information in the arbitration decision had been used for a purpose that was reasonably compatible with the original purpose for the collection, we stated,

In our view, this use was not reasonably compatible with the purpose identified by the Board in its notice of collection **because** [emphasis added] it extended beyond the very narrow use contemplated in the notice.

Since the above wording has apparently resulted in some misunderstanding, we wish to clarify our position as follows:

Generally speaking, the fact that a use of personal information may extend beyond the intended use set out in a notice of collection would not, in itself, be cause for finding that it was not reasonably compatible with the intended purpose. As the Board has noted, the Act includes provisions for the use of personal information for a consistent purpose, which would not be identical to the intended purpose for the collection. Our reasons for finding that a use is or is not reasonably compatible with the intended purpose are based on the specific circumstances of each case.

In this particular case, the Board conducted a job competition for a specific position. The use described in the notice was "for the purpose of this competition only". The Board explained to us that this notice applied to the collection of reference information, which therefore included the arbitration decision. Our understanding of the Board's intent at the time the notice was provided was that there was to be one, and only one use for the collection -- for the purpose of the job competition. However, the Board used the information contained in the arbitration record to make a decision to remove the complainant's name from its list of occasional teachers (unrelated to this competition), and effectively terminate his employment with the Board.

In our view, by using the word "only" in its notice, the Board was giving assurance to all job candidates that the personal information to be collected would be used for a specific, limited purpose (the job competition). Accordingly, it is our view that the word "only" in the notice was meant to be taken literally -- and we have done so. Thus, after considering the above circumstances, it is our view that using the personal information for the purpose of removing the complainant's name from the list of occasional teachers would be not be reasonably compatible with the purpose stated in the notice. In light of the fact that we did not consider the use of the personal information to be reasonably compatible with the purpose for which it was collected, we conclude that the personal information was not used in accordance with section 31(b) of the Act when the Board used it for a purpose other than the competition (i.e. to remove

the complainant's name from its list of occasional teachers, thereby terminating his employment).

Use 2) It is our view that when the Board terminated the complainant's long-term contract, which he was awarded as a result of the competition, it used the personal information for the purpose for which it was obtained (i.e. to make a decision about the successful candidate in the competition). Therefore, it is our view that the Board used the personal information in accordance with section 31(b) of the Act when it made its decision to terminate the long-term contract of the complainant.

Conclusions: **Use 1)** The personal information was not used in accordance with section 31(b) of the Act when the Board used it to remove the complainant's name from its list of occasional teachers.

Use 2) The personal information was used in accordance with section 31(b) of the Act when the Board used it to terminate the complainant's long-term contract.

Other Matters

We wish to draw attention to the following matters:

The complainant was concerned that his medical information might have been used by the Board in making its decision concerning his employment. Although we are aware that the arbitration decision contained medical information about the complainant, we could find no evidence to support the complainant's view that the information had actually been used in making the decision to terminate. We concluded that on the balance of probabilities, the complainant's medical information had not been used by the Board, and therefore, we did not include this item as an issue to address in this report.

The Board asked the complainant to provide the names of referees that the Board could contact for reference purposes. However, the Board collected the complainant's personal information from a different source (the arbitration decision), without his knowledge. The complainant's view of this was that his personal information had been collected surreptitiously. However, it is our understanding that it is not the Board's practice to search public records for information about job candidates without their knowledge. In this case, it was only after the Board became aware of the arbitration decision, that it decided to obtain a copy of it. In future, if a similar situation arises, we suggest that in the spirit of the Act, the Board advise the individual that it has become aware of an arbitration decision (or other public record) about him or her, and

intends to collect it and use the information contained therein. However, the Board should be aware that proper notice must also be given in accordance with section 29(2) of the Act.

The Board referred to the notice previously discussed in Issue E of this report when asked if notice was provided for the job competition and subsequent reference checks. The Board's notice stated that "personal information provided by applicants will be used for the purposes of this competition only". In our view, the wording of this notice is very narrow. It does not appear to contemplate that information collected might be used for a purpose other than the job competition involved, nor does it appear to contemplate that information that may be collected indirectly, during the course of reference checks. In determining whether the Act had been contravened, we relied on the wording of the Board's notice to determine the Board's intent with regard to the use of the personal information collected for the job competition. Similarly, individuals whose personal information is being collected would also rely on the wording of the Board's notice to advise them of how their personal information will be used by the Board. Therefore, we wish to stress the importance of the wording contained in a notice of collection regarding the intended use(s) of the personal information collected.

For the purposes of this investigation, we have taken the view that the candidate, in giving the Board the names of his referees, was authorizing the indirect collection of his personal information regarding his reference checks. However, the Board had no record to show that the indirect collection of reference information had actually been authorized by the complainant, other than on a page of notebook paper, where information about the referees was written. This page did not contain the complainant's name, signature, date, or any other information to support the Board's position that the indirect collection had been authorized by the complainant. In our view, the Board's current method of obtaining authorization should be strengthened to provide greater support regarding authorizations for the indirect collection of reference information.

The Board had also spoken with an individual who was not one of the referees named by the complainant to ask if anyone at that person's board could provide a reference for the complainant. Since we have taken the view that the complainant had authorized the Board to contact the individuals in question when he gave the Board their names, we also take the view that the complainant's authorization was limited to those individuals, and did not extend to individuals whose names he had not provided. The Board should be aware that collecting the complainant's personal information from an individual other than the named referees, contravenes section 29(1) of the Act.

SUMMARY OF CONCLUSIONS

- The arbitration decision contained the complainant's personal information, as defined in section 2(1) of the Act.

- Section 27 of the Act did not apply to the record of the arbitration decision.
- The Board collected the complainant's personal information in accordance with section 28(2) of the Act.
- The collection was made in accordance with section 29(1) of the Act.
- The Board did not provide proper notice for the collection of personal information for the job competition and subsequent reference checks in accordance with section 29(2) of the Act.
- The personal information was not used in accordance with section 31(b) of the Act when the Board used it to remove the complainant's name from its list of occasional teachers.
- The personal information was used in accordance with section 31(b) of the Act when the Board used it to terminate the complainant's long-term contract.

RECOMMENDATIONS

We recommend that the Board incorporate the following points into its procedures:

1. that proper notice for the collection of personal information be provided by the Board when it conducts job competitions and reference checks associated with the competition.
2. that proper notice be provided by the Board to individuals if it collects personal information about them from public records.
3. that written authorization be obtained by the Board from job candidates to contact individual referees and that the Board restrict itself to collecting reference information only from those referees it has been authorized to contact.

Within six months of receiving this report, the Board should provide the Office of the Information and Privacy Commissioner/Ontario with proof of compliance with the above recommendations.

Original signed by: _____
Ann Cavoukian, Ph.D.
Assistant Commissioner

August 11, 1993 _____
Date



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Commissioner/Ontario
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INVESTIGATION REPORT

INVESTIGATION I93-011M

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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a Regional Police Service (the Police).

The complainant filed a complaint with the Police's internal Investigation Unit which handles public complaints against police personnel. During the course of investigating the complaint, two investigating officers met with the complainant. The complainant stated that in this meeting the investigating officers indicated that they knew she had made a request for access to information (access request) under the Municipal Freedom of Information and Protection of Privacy Act (the Act), and the details of that request. The complainant stated that this information must have been disclosed to and by these two officers, contrary to the Act. However, apart from the two officers, the complainant was not able to specifically identify the parties involved.

In addition, the complainant learned that five individuals with the Police had received a copy of her access request. The complainant has submitted that these five individuals (whom she identified as three police personnel and two superintendents) disclosed her personal information to other individuals either within or outside of the Police, contrary to the Act.

Issues Arising from the investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the Act?
- (B) Was the personal information disclosed to the investigating officers by the Police and, if so, was the disclosure in accordance with section 32 of the Act?
- (C) Was the personal information disclosed by the investigating officers to any other individual, and, if so, was this disclosure in accordance with section 32 of the Act?
- (D) Was the personal information disclosed by the five individuals identified by the complainant, and, if so, was the disclosure in accordance with section 32 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

...

(d) the address, telephone number, symbol or other particular assigned to the individual,

...

(h) the individual's name if it appears with some other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The information in question is the fact that the complainant filed an access request with the Police and the details of the access request. The access request contained her name, address, and telephone number. In our view, this information meets the requirements in paragraph (d) and (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was personal information as defined in section 2(1) of the Act.

Issue B: Was the personal information disclosed to the investigating officers by the Police and, if so, was the disclosure in accordance with section 32 of the Act?

According to the Police, when the complainant filed the complaint against the Police, she provided material that, to the investigating officers' knowledge, could only have been obtained through an access request under the Act. This material included a partial transcript of a police dispatch recording.

The Police informed us that while investigating the complainant's complaint against the Police, the investigating officers interviewed the complainant. During the course of this interview several items were discussed including the information that the complainant had filed with her complaint, and her access request. One of the investigating officers stated that, in these discussions, the complainant advised that she had made an access request under the Act. He also stated that the complainant was upset that some questions he asked of her related to information that she had not received under her access request.

The Police maintained that the investigating officers became aware that the complainant had made an access request based upon the material filed by the complainant when she made her complaint, and not through a disclosure of the access request itself by the Police.

Having considered the information provided by the Police and the complainant, we are of the view that the two investigating officers learned that the complainant had filed an access request based upon their consideration of the material filed with the complaint and the information under discussion during the interview with her. In our view, the Police did not disclose the access request itself to the investigating officers.

Conclusion: The personal information was not disclosed to the investigating officers by the Police.

Issue C: Was the personal information disclosed by the investigating officers to any other individual, and, if so, was this disclosure in accordance with section 32 of the Act?

The complainant has questioned whether the investigating officers disclosed her personal information to any other individual.

The Police have informed us that the investigating officers disclosed the complainant's personal information to their direct Supervisor. However, this disclosure was limited to the fact that the complainant had filed an access request. It did not include details of the access request itself. The Police have stated that the officers and the Supervisor did not disclose this information to anyone else.

The Police have relied upon section 32(d) of the Act for this disclosure. This section states:

An institution shall not disclose personal information in its custody or under its control except,

...

- (d) if the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and if the disclosure is necessary and proper in the discharge of the institution's functions;

...

The Police informed us that the investigating officers' Supervisor had the responsibility of ensuring that his staff thoroughly investigated all public complaints. Based upon these investigations, the Supervisor must make a formal recommendation to the Chief of Police as to whether a member of the Police should be disciplined. Therefore, the Police maintained that the Supervisor must be aware of all circumstances surrounding an investigation. The Police submitted that section 32(d) of the Act applied.

It is our view that conducting investigations of complaints against the Police, as set out in Part VI of the Police Services Act, is a function of the institution. In our view, the Supervisor needed all of the information related to the complaint investigation in the performance of his duty of ensuring thorough investigations of complaints and determining matters of discipline. This information would include the fact that the complainant had made an access request to obtain some of the material she filed with her complaint against the Police. In our view, this disclosure was to a Police officer who needed the record in the performance of his duties and was necessary and proper in the discharge of one of the Police's functions. Therefore, the disclosure was in accordance with section 32(d) of the Act.

Conclusion: The personal information was disclosed to the investigating officers' Supervisor in accordance with section 32(d) of the Act.

Issue D: Was the personal information disclosed by the five individuals identified by the complainant, and, if so, was the disclosure in accordance with section 32 of the Act?

The complainant did not provide any evidence to substantiate her claim that the five individuals (who she identified as three police personnel and two superintendents) disclosed her personal information to other individuals either within or outside of the Police.

The Police contacted the police personnel and the superintendents to determine if they had disclosed the complainant's personal information to any other individual. Of these five individuals, four stated that they had not disclosed the complainant's personal information to anyone else. However, one superintendent informed the Police that he had provided an inspector, who was the immediate supervisor of one of the five individuals, with a copy of the complainant's access request, for the purpose of instructing that inspector to obtain the necessary records for the access request. The superintendent did not disclose the personal information to anyone other than this inspector. The Police also informed us that the inspector did not disclose the personal information to anyone other than to the individual under his supervision.

We have reviewed section 32 of the Act and, in our view, none of the provisions apply to the disclosure of the access request. The Police have acknowledged that there was no need to disclose the complainant's access request, in its entirety, to the inspector. The Police no longer distribute a copy of the access request when requesting records. Instead, the relevant Police personnel are advised that an access request has been received and that certain records are required.

Conclusion: One of the five individuals identified by the complainant disclosed the complainant's personal information to an inspector, contrary to section 32 of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was personal information as defined in section 2(1) of the Act.
- The personal information was not disclosed to the investigating officers by the Police.
- The personal information was disclosed to the investigating officers' Supervisor in accordance with section 32(d) of the Act.
- One of the five individuals identified by the complainant disclosed the complainant's personal information to an inspector, contrary to section 32 of the Act.

RECOMMENDATIONS

Since the Police have already implemented changes in the manner in which access requests are processed, we do not think it is necessary to make any further recommendations.

Original signed by: _____
Susan Anthistle
Compliance Review Officer

July 21, 1993
Date



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of Community and Social Services (the Ministry).

An employee at one of the Ministry facilities complained to the Information and Privacy Commissioner/Ontario that the Ministry had improperly disclosed his personal information. According to the complainant, in August 1992 he had written to the Executive Assistant (the EA) of the Ministry's Southwest Regional Office and had enclosed a number of documents with the letter (the records). In the letter, the complainant had made a number of allegations regarding his treatment by various staff at the facility. The complainant stated that he had asked the EA not to send the records or show them to anyone else. According to the complainant, he had telephoned the EA about four days after he had delivered the records to inquire whether the EA intended to conduct an investigation based on the additional information contained in the records. The EA had advised him that he did not plan to conduct an investigation but that he had sent the records to the Acting Administrator at the facility (the Administrator). It was the complainant's view that the EA had disclosed his personal information contrary to the provisions of the Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the investigation

The following issues were identified as arising from the investigation:

- A. Was the information in question "personal information" as defined in section 2(1) of the Act?
- B. If yes, was the disclosure of the personal information in accordance with section 42 of the Act?

RESULTS OF THE INVESTIGATION

Issue A. Was the information "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

...

- (d) the address, telephone number, fingerprints or blood type of the individual,
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

We have reviewed copies of the records. They identified the complainant by name and contained information which satisfied the requirements of paragraphs (d) and (h) of the definition of "personal information" in section 2(1) of the Act.

Conclusion: The information in question was "personal information" as defined in section 2(1) of the Act.

Issue B. Was the disclosure of the personal information in accordance with section 42 of the Act?

According to the Ministry, the complainant had telephoned the Regional Office in July 1992, and had made a number of allegations regarding his employment at the facility. The complainant had spoken to the EA who had discussed the allegations with the acting Regional Director and the matter had then been referred to the Administrator. The Administrator had investigated the complainant's allegations and had advised the complainant of the results of the investigation by letter, dated July 31, 1992. During the course of the investigation, the complainant had been advised that the investigation resulted from the telephone call he had made to the EA at the Southwest Regional Office.

The Ministry stated that on August 10, 1992, the complainant visited the Regional Office and left an envelope addressed to the EA, marked "confidential" and with the words, "Investigate this", written on it. The envelope contained the records which appeared to the EA to be related to the matter that the complainant had complained about in July, therefore he sent the records to the Administrator.

The Ministry stated that the complainant telephoned the EA on August 11, 1992, and asked the EA if he had read the material. The complainant repeated in general terms the allegations he had made in July and the EA advised the complainant to take up the matter with the Administrator. The complainant again telephoned the EA on October 13, 1992, and asked the EA about the records. The EA advised him that he had sent the records to the Administrator. The complainant then advised the EA that if he had wanted the Administrator to see the records, he would have sent them directly to the Administrator.

According to Ministry, in the EA's judgement, the records were related to the complainant's previous allegations about his employment at the facility. There was no indication that the records were not to be sent to the Administrator. The envelope was addressed to the EA, and marked "confidential" and had the words, "Investigate this", written on it. Therefore, the EA sent the records to the Administrator who had been responsible for the investigation of the complainant's previous allegations. The Ministry has stated that it relied on section 42(d) of the Act for sending the records to the Administrator.

Section 42(d) of the Act states:

An institution shall not disclose personal information in its custody or under its control except,

- (d) where disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and where disclosure is necessary and proper in the discharge of the institution's functions;

One of the Ministry's functions includes the supervision and management of its employees. Therefore, the Ministry had an obligation to investigate the allegations made by the complainant concerning his treatment by other staff. In order to conduct a proper investigation, the Ministry had to gather all the relevant evidence. As part of his duties, the Administrator had been responsible for the investigation of the complainant's previous allegations. The records appeared to the EA to be related to this previous investigation, therefore, he forwarded the records to the Administrator. In our view, the disclosure of the records to the Administrator was to an officer of the Ministry who needed them in the performance of his duties and was necessary and proper in the discharge of Ministry's functions. Therefore, the disclosure was in accordance with section 42(d) of the Act.

Conclusion: The disclosure of the complainant's personal information was in accordance with section 42(d) of the Act.

SUMMARY OF CONCLUSIONS

- o The information in question was "personal information" as defined in section 2(1) of the Act.
- o The disclosure of the complainant's personal information was in accordance with section 42(d) of the Act.

Original signed by
Ann Cavoukian, Ph.D.
Assistant Commissioner

June 15, 1993
Date



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

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INVESTIGATION REPORT

INVESTIGATION I93-016M

A MUNICIPALITY



INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a named Municipality (the Municipality).

The complainant, an employee of the Municipality's licensing commission, was a Workers' Compensation Board (WCB) claimant, and a recipient of long-term disability (LTD) benefits from the Municipality. Her complaint was that embarrassing medical information about herself, contained in a WCB Decision Review Specialist's Report (the Report) had been disclosed by the Municipality to a named insurance company and to non-medical staff at the licensing commission, contrary to the Municipal Freedom of Information and Protection of Privacy Act (the Act).

The complainant advised that she had not given her consent for disclosure of the Report to the insurance company or to licensing commission staff. The complainant maintained that when she had worked for the licensing commission, she had seen similar reports herself, and was aware that no medical personnel were employed by the licensing commission. In the complainant's view, licensing commission staff should not have had access to her sensitive medical information.

The complainant also contended that the Report was improperly disclosed at an arbitration hearing arising from grievances she had filed against the Municipality, relating to WCB payments she had received from the Municipality, pending the Report's decision.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information contained in the Report "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Did the Municipality disclose the personal information to the licensing commission, in accordance with section 32 of the Act?
- (C) Did the Municipality disclose the personal information to the insurance company, in accordance with section 32 of the Act?
- (D) Did the Municipality disclose the personal information at the arbitration hearing in accordance with section 32 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information contained in the Report "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information", in part, as:

recorded information about an identifiable individual, including,

- (b) information relating to the education or the **medical**, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved, (emphasis added)
- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

We reviewed the Report and found that it contained the complainant's medical history. We also noted that it contained information concerning the WCB advances paid to the complainant by the Municipality, and references from physicians and other specialists related to workplace accommodation to address the complainant's physical limitations.

In our view, the information in the Report met the requirements of paragraphs (b) and (h) of the definition of "personal information" in section 2(1) of the Act.

Conclusion: The information contained in the Report was personal information, as defined in section 2(1) of the Act.

Issue B: Did the Municipality disclose the personal information to the licensing commission, in accordance with section 32 of the Act?

The complainant's concern centred on the disclosure of the Report to non-medical staff at the licensing commission. The complainant felt that the licensing commission only needed to know whether her WCB claim had been approved or denied.

Under the Act, an institution shall not disclose personal information in its custody or under its control, except in the circumstances outlined in section 32.

The Ministry stated that its treasury department had disclosed the Report to the licensing commission, which functions as a department of the Municipality in its relationship to other

departments. It was thus the Municipality's view that the disclosure had been internal to the Municipality, and was in accordance with section 32(d) of the Act, i.e., disclosure to an officer or employee of the institution who needed the record in the performance of his or her duties.

However, for the purposes of the Act, the licensing commission is considered to be a separate institution from the Municipality. Therefore, we examined the application of section 32(c) of the Act to the Municipality's disclosure to the licensing commission. This section states:

An institution shall not disclose personal information in its custody or under its control except,

- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;

The Municipality advised that its treasury department had obtained the Report from the WCB for administrative purposes including computer updating of claims information and for distribution to the affected "department", in this case, the licensing commission. The licensing commission was responsible for WCB claims management which included payroll recording and the payments of benefits. The Municipality stated that the Accounting Supervisor and the Payroll Clerk had access to the Report in order to perform their administrative duties related to claims management. The Report was also disclosed to the Director of Administration in order to respond to questions directed to him from the complainant.

The Municipality also advised that such WCB reports generally included information related to "prognosis, re-training and rehabilitation, workplace accommodation requirements and any other factors which are relevant". The affected "department" assesses a report's decision to help determine whether an appeal should be filed with the WCB and to respond to the issues addressed in the report, such as workplace accommodation etc.

It is our view that in this case, one of the purposes for which the Municipality (the treasury department) had collected the Report was for claims administration including computer updating of WCB claims information. The Municipality then disclosed the Report to the staff of the affected "department" -- the licensing commission, for WCB claims management which included payroll recording, payments of benefits and assessment purposes.

Section 33 of the Act states:

The purpose of a use or disclosure of personal information that has been collected directly from the individual to whom the information relates is a consistent purpose under clauses 31(b) and 32(c) only if the individual might reasonably have expected such a use or disclosure.

However, when personal information has been collected indirectly, as in the circumstances of this case, a "consistent purpose" is one which is "reasonably compatible" with the purpose for which the information was obtained or collected. In our view the Municipality disclosed the Report to the licensing commission for purposes which were reasonably compatible with the purpose for which the Municipality had obtained it. Therefore, the Municipality's disclosure to the licensing commission was for a consistent purpose, in accordance with section 32(c) of the Act.

Conclusion: The Municipality's disclosure of the complainant's personal information to the licensing commission was in accordance with section 32 of the Act.

Issue C: Did the Municipality disclose the personal information to the insurance company, in accordance with section 32 of the Act?

The Report contained medical information about the complainant as well as details such as the amount of WCB advances paid to the complainant. The complainant contended that the Municipality had no right to disclose the medical information contained in the Report to the insurance company without her consent. The complainant explained that forms sent to her by the insurance company often contain a waiver concerning disclosure. She routinely crosses out such waivers, and had not consented to any disclosure to the insurance company. The complainant contended that if medical information had been required by the insurance company, it could have been obtained directly from herself, or the WCB.

The Municipality stated that it had relied on section 32(c) of the Act for the disclosure of the Report to the insurance company i.e., for a consistent purpose.

The Municipality acknowledged that it did not have the complainant's specific consent for this disclosure. However, the Municipality advised that when a claim for Long Term Disability (LTD) is in place, as in the complainant's case, relevant WCB correspondence to the employer regarding an employee's benefits is disclosed to the insurance company for both administrative and "adjudicative" purposes. The Municipality advised that it pays the full amount of benefits, whether workers' compensation or LTD. In the case of LTD benefits, the insurance company issues benefit cheques, but sends monthly invoices for the total amount paid to each individual to the Municipality.

The Municipality stated that it has an "Administrative Services" contract with the insurance company which provides for "arms length adjudication" of long term disability claims. To appropriately grant or deny a claim is dependant on the insurance company receiving or collecting all the information necessary to make such a decision. As all claims rest on an individual's medical condition, decisions cannot be made in the absence of such information. In the circumstances where an individual suffers a work-related injury for which workers'

compensation benefits are paid, and an application for LTD benefits has also been made, proper adjudication requires accurate information about the nature of the injury or illness, the prognosis, any other factors which may affect the individual's return to work, and his/her eligibility for either workers' compensation benefits or LTD benefits. An individual is not entitled to both workers' compensation benefits and LTD benefits. It is important that an individual receive the appropriate benefits since he/she may be required to participate in a WCB return to work program, when in reality they may not be able to do so and may be eligible for LTD benefits.

The Municipality also believed that the most accurate information would be obtained from the records created at the time of the injury and during the subsequent claims and adjudication processes, and the resulting Decision Review Officer's reports. These reports contain information provided by the applicant, physician(s) and other specialists. The Municipality submitted that in many cases, this information is sufficient to verify eligibility for LTD, in the event workers' compensation benefits are terminated. The Municipality stated that in adjudicating the disability claim, the insurance company may decide to arrange for examination by an independent physician in addition to considering the Report.

In the complainant's case, her workers' compensation **benefits** were terminated but she was awarded a lifelong **pension** for chronic pain by the WCB. It was determined by the insurance company that she was also entitled to full LTD benefits. The insurance company, therefore, used the Report to determine whether the complainant was eligible for LTD benefits and the level of those benefits. The insurance company confirmed that the medical information contained in the Report was used for these purposes.

In our view, one of the purposes of the Municipality's collection of the Report would have been to use the medical information it contained to determine if workers' compensation benefits or LTD benefits were due to the complainant. The Municipality's disclosure to its insurance company of the complainant's medical information in the Report was to provide the insurance company with information so that it could determine, as per its agreement with the Municipality, the LTD benefits which were due to the complainant from the Municipality. In our view, the Municipality's disclosure of the medical information in the Report to the insurance company was for the same purpose for which the information had been collected. Therefore, the disclosure was in accordance with section 32(c) of the Act.

Conclusion: The Municipality's disclosure to the insurance company of the complainant's personal information contained in the Report, was in accordance with section 32 of the Act.

Issue D: Did the Municipality disclose the personal information at the arbitration hearing in accordance with section 32 of the Act?

The complainant contended that the Municipality had improperly disclosed the information contained in the Report at an arbitration hearing arising from grievances she had filed. She stated that the medical information in the Report was not deleted before it went to arbitration.

The Municipality originally stated that it was its view that the disclosure was in accordance with section 32(c) of the Act, i.e. that it was for a consistent purpose. Its position was that the Report was disclosed at the arbitration hearing because it contained information directly related to two of the grievances filed by the complainant.

However, the Municipality later stated that the lawyer who had represented the complainant at the arbitration hearing had had an opportunity to object to the introduction of the Report at the arbitration. We confirmed with the lawyer that this was the case.

Section 32(b) of the Act states:

An institution shall not disclose personal information in its custody or under its control except,

- (b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;

It is our view that the lawyer was acting as the complainant's agent at the arbitration hearing. It is also our view that the complainant, through her agent, had identified the Report but had not objected (again through her agent) to the disclosure of the Report and its contents. In our view, the complainant's implied consent was given to the Report's disclosure at the arbitration hearing. The Municipality's disclosure of her personal information in the Report was, therefore, in accordance with section 32(b) of the Act.

Conclusion: The Municipality's disclosure of the complainant's personal information at the arbitration hearing was in accordance with section 32 of the Act.

Other Matters

With respect to the security of the complainant's personal information, the Municipality has advised us that all correspondence received from the WCB related to the management of claims is stored in locked cabinets in the treasury department and in the accounting/payroll section at the licensing commission.

At the treasury department, access is restricted to staff responsible for managing the claims process. Access to the treasury department floor is controlled through a security card system. At the licensing commission, access is restricted to accounting/payroll staff; other staff may not enter this section without supervision by area staff. The section is also locked at night.

SUMMARY OF CONCLUSIONS

- The information contained in the Report was personal information, as defined in section 2(1) of the Act.
- The Municipality's disclosure of the complainant's personal information to the licensing commission was in accordance with section 32 of the Act.
- The Municipality's disclosure to the insurance company of the complainant's personal information in the Report was in accordance with section 32 of the Act.
- The Municipality's disclosure of the complainant's personal information at the arbitration hearing was in accordance with section 32 of the Act.

Original signed by: _____

Ann Cavoukian, Ph.D
Assistant Commissioner

May 25, 1994 _____

Date



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INVESTIGATION REPORT

INVESTIGATION I93-018P

MINISTRY OF THE SOLICITOR GENERAL
AND CORRECTIONAL SERVICES



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of the Solicitor General and Correctional Services (the Ministry).

In his letter of complaint, the complainant stated:

After a visit to my Probation Officer (the named Probation Officer) my ex wife told my son that she had received a call from (the named Probation Officer) and she divulged information to her that his daddy wanted to kill all women. I want action taken on this matter as my rights have been VIOLATED.

Issues Arising from the investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Freedom of Information and Protection of Privacy Act (the Act)?
- (B) Did the Ministry disclose the personal information, in accordance with section 42 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information", in part, as:

recorded information about an identifiable individual, including,

...

(g) the views or opinions of another individual about the individual, and

...

In our view, if the Probation Officer was of the view or opinion that the complainant wanted to kill all women, this would constitute the complainant's personal information, in accordance with paragraph (g) of the definition of personal information, in section 2(1) of the Act.

Conclusion: If the Probation Officer was of the view or opinion that the complainant wanted to kill all women, this would constitute the complainant's "personal information", as defined in section 2(1) of the Act.

Issue B: Did the Ministry disclose the personal information, in accordance with section 42 of the Act?

Section 42 of the Act prohibits the disclosure of personal information by an institution, except in certain circumstances. (For the full text of section 42, please refer to Appendix A.)

As previously mentioned, the complainant believed that the Probation Officer told his ex-wife that he wanted to kill all women.

We contacted the Probation Officer. She denied that she told the complainant's ex-wife that the complainant wanted to kill all women.

We also reviewed the documents in the complainant's case supervision file, as they pertained to the Probation Officer's supervision of the complainant. We found no evidence of the Probation Officer having made this statement.

Conclusion: We found no evidence of the Probation Officer having disclosed the information, in question.

SUMMARY OF CONCLUSIONS

- If the Probation Officer was of the view or opinion that the complainant wanted to kill all women, this would constitute the complainant's personal information, as defined in section 2(1) of the Act.
- We found no evidence of the Probation Officer having disclosed the information, in question.

Original signed by: _____
John J. Brans
Manager of Compliance

July 16, 1993
Date

APPENDIX A

42. An institution shall not disclose personal information in its custody or under its control except,

- (a) in accordance with Part II;
- (b) where the person to whom the information relates has identified that information in particular and consented to its disclosure;
- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
- (d) where disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and where disclosure is necessary and proper in the discharge of the institution's functions;
- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament or a treaty, agreement or arrangement thereunder;
- (f) where disclosure is by a law enforcement institution,
 - (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
 - (ii) to another law enforcement agency in Canada;
- (g) where disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
- (i) in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased;
- (j) to a member of the Legislative Assembly who has been authorized by a constituent to whom the information relates to make an inquiry on the constituent's behalf or, where the constituent is incapacitated, has been authorized by the next of kin or legal representative of the constituent;
- (k) to a member of the bargaining agent who has been authorized by an employee to whom the information relates to make an inquiry on the employee's behalf or, where the employee is incapacitated, has been authorized by the next-of-kin or legal representative of the employee;

- (l) to the responsible minister;
- (m) to the Information and Privacy Commissioner; and
- (n) to the Government of Canada in order to facilitate the auditing of shared cost programs.



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INVESTIGATION REPORT

INVESTIGATION I93-022M

A MUNICIPAL BOARD OF EDUCATION

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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a municipal Board of Education (the Board).

The complainant was of the view that his personal information had been improperly disclosed when the Board identified him and three other individuals in a newspaper article, as being part of a group responsible for filing the most freedom of information requests with the Board. These requests were for access to information under the Municipal Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from this investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Was the Board's disclosure of the personal information to the newspaper, in accordance with the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (h) the individual's name where it appears with other personal information relating to the individual...

The complainant provided us with two newspaper articles dated February 6, 1993 and February 10, 1993. In the February 6, 1993 article, the Board identified the complainant and three other individuals as being part of a group responsible for filing the most freedom of information requests with the Board. The second newspaper article dated February 10, 1993, reported on the complainant's reaction to being named in the February 6, 1993 article.

It is our view that the information in question met the requirements of paragraph (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was personal information as defined in section 2(1) of the Act.

Issue B: Was the Board's disclosure of the personal information to the newspaper, in accordance with the Act?

We determined that in an interview with a local newspaper reporter, the Chair of the Board and the Director of Education said that the Board had received a total of 247 freedom of information access requests during 1991 and 1992. They also told the reporter that these 247 requests had been made by a total of 27 people. The Board then identified four individuals by name, including the complainant, as part of a group that was responsible for filing the most access requests with the Board. This information appeared in the February 6, 1993, newspaper article.

Under the Act, an institution may not disclose personal information in its custody or under its control except in the specific circumstances outlined in section 32.

However, the Board has submitted that section 50(1) of the Act is applicable in the circumstances of this case, and that it is not necessary to rely on section 32 of the Act for the disclosure. Section 50 of the Act provides in part that:

(1) If a head may give access to information under this Act, nothing in this Act prevents the head from giving access to that information in response to an oral request or in the absence of a request.

The Board stated that if a formal access request had been made under Part I of the Act, disclosure of the personal information would not have constituted an "unjustified invasion of personal privacy" under section 14 of the Act. Thus, the head would have been obliged to provide access to the personal information. The Board submitted that since the head could have given access if a formal request had been made, the Board was then permitted to give access "in response to an oral request or in the absence of a request", as outlined in section 50(1) of the Act.

The Board further submitted that since section 50(1) says "nothing in this Act prevents the head from giving access", then section 50(1) overrides all other sections of the Act, in particular section 32. It argued that even if the disclosure is not in accordance with section 32, access can be given pursuant to section 50(1) of the Act. The Board submitted that if the Legislature had intended to exclude section 32 when placing in section 50(1) the words "nothing in this Act", it would have done so.

In addition, according to the Board, the reference to "information" in section 50(1) of the Act is a term broad enough to include both personal information and information that is not personal. In previous investigation reports, we have held the view that section 50(1) of the Act does not apply to personal information. The Board submitted that if the Legislature had intended personal information to be excluded from section 50(1), it would have said so.

We have carefully considered the Board's previous submissions regarding this issue and its present submissions concerning the instant case. However, we do not agree with the Board's interpretation of section 50(1) of the Act.

The Board stated that the reference to "information" in section 50(1) of the Act is a term broad enough to include both personal information and information that is not personal. It is our view that section 50(1) of the Act was designed to promote routine disclosure of information, **other than** personal information, in accordance with the purposes of the Act.

However, even assuming that section 50(1) applied to personal information, we do not agree with the Board's argument. In our view, even if section 50(1) of the Act were to be interpreted as permitting the disclosure of personal information in the absence of a request under Part I, the disclosure under section 50(1) would still have to be in accordance with the Act since that section specifically states "If a head may give access to information **under this Act...**" (emphasis added). Therefore, the disclosure would need to comply with Part I of the Act and section 50(1) would not override all other sections of the Act. In order to comply with Part I, an institution would need to comply with the notification provisions set out in section 21 of the Act. This section requires the notification of individuals in situations where disclosure of the personal information **might** constitute an "unjustified invasion of personal privacy". It provides that an individual should be given an opportunity to explain why, in their view, the disclosure of the information **might** be an unjustified invasion of personal privacy, before the head makes a decision regarding whether to provide access to the personal information. In our view, adopting an interpretation of section 50(1) which avoids the need for the notification of affected parties would be inconsistent with the purposes of the Act.

Therefore, since it is our view that the disclosure would not have complied with Part I of the Act, it would not have been in accordance with section 50(1) of the Act.

In addition, it is our view that none of the disclosure provisions of section 32 of the Act applied to the disclosure of the personal information in question. Therefore, the disclosure of the complainant's personal information was not in accordance with the Act.

Conclusion: The Board's disclosure of the complainant's personal information to the newspaper was not in accordance with the Act.

SUMMARY OF CONCLUSIONS

- The information in question was personal information as defined in section 2(1) of the Act.
- The Board's disclosure of the complainant's personal information to the newspaper was not in accordance with the Act.

RECOMMENDATION

We recommend that the Board take the necessary precautions to ensure that in future, all disclosures of personal information are made in accordance with the Act. For example, advice regarding the disclosure of the names of individuals making access requests under the Act should be incorporated into any Board policies or guidelines concerning the Act.

Since we have already made this recommendation to the Board in a previous investigation, the Board may provide the Office of the Information and Privacy Commissioner with proof of compliance with this recommendation, at the same time it responds to the earlier investigation.

Original signed by:
Ann Cavoukian, Ph.D.
Assistant Commissioner

September 29, 1993
Date



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-I56

INVESTIGATION REPORT

INVESTIGATION I93-023P

ONTARIO LABOUR RELATIONS BOARD



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ontario Labour Relations Board (the Board).

The complaint was filed by an employer (the Employer) on behalf of its employees.

The Employer was engaged in a dispute with a union (the Union) before the Board. The Union was seeking to unionize the Employer's employees, and, to this end, had commenced certification proceedings before the Board. During the course of these proceedings, the Employer was required to submit four lists of its employees to the Board. In a letter to the Board, the Union asked the Board for a copy of these lists. In a written decision, the Board complied with the Union's request, ordering the labour relations officer involved in the case to disclose the lists to the Union.

The Employer has submitted that the Board's disclosure of the lists, which contained the employees' personal information, was contrary to the Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act?
- (B) Was the disclosure of the personal information by the Board in accordance with section 42 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The four lists contained each employee's name, his/her occupational classification, and an indication of whether or not the employee worked 24 hours per week or more. The lists contained additional information including whether or not the employee was at work on the application date; the municipality in which each employee worked; an indication of whether the employee was not at work on the application date by reason of lay-off; the date of lay-off; the expected date of recall; an indication of whether the employee was in the bargaining unit on the application date; the last day the employee worked; the reason for the employee's absence on the application date; and the expected date of return to work.

In our view, the information in these lists met the requirements in paragraph (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was "personal information" as defined in section 2(1) of the Act.

Issue B: Was the disclosure of the personal information by the Board in accordance with section 42 of the Act?

Under the Act, personal information in the custody or control of an institution can not be disclosed except in the specific circumstances outlined in sections 42(a) to 42(n).

Both the Employer and the Board made submissions regarding the application of sections 42(a), 42(c) and 42(e) of the Act to the disclosure of the lists. Therefore, we have examined each of these sections separately.

Section 42 of the Act states, in part:

An institution shall not disclose personal information in its custody or under its control except,

(a) in accordance with Part II;

...

(c) for the purpose for which it was obtained or compiled or for a consistent purpose;

...

(e) for the purpose of complying with an Act of the Legislature or an Act of Parliament or a treaty, agreement or arrangement thereunder;

...

Section 42(a)

Section 42(a) states that an institution shall not disclose personal information except in accordance with Part II of the Act. Section 21 of Part II of the Act provides a general rule of non-disclosure of personal information to any person other than the person to whom the information relates. Certain exceptions to this general rule are set out in section 21(1). These

exceptions include, in part, where it would not be an unjustified invasion of personal privacy to disclose the personal information. Sections 21(2) and 21(3) then provide a series of guidelines and/or presumptions that are to be taken into account by the head in determining whether or not a particular disclosure constitutes an unjustified invasion of personal privacy. The head is also obliged, under section 21(2) to "consider all the relevant circumstances", in addition to those expressly mentioned.

The Board submitted that the disclosure of the personal information was:

in accordance with Part II of the FIPPA [per section 42(a)] and did not constitute an "unjustified invasion of personal privacy" within the meaning of section 21(1)(f), having regard to section 21(2)(d).

The Board further stated that:

It is submitted that no statutory presumption against disclosure is appropriate under section 21(3) of FIPPA. For the reasons expressed above, it is the Board's position that the information in issue does not relate to "employment history" within paragraph (d). It is submitted that no other part of section 21(3) is even arguably relevant.

It is further submitted that the information in issue is "relevant to a fair determination of rights" within section 21(2)(d), and that disclosure is not "unjustified" in these circumstances.

The Board referred us to certain case law. It submitted that the practice of the Board is rooted in considerations of fairness and the protection and advancement of statutory rights. In summary, the Board stated that:

In short, the OLRB [the Board] is obliged by the rules of natural justice to provide an applicant union with access to the information contained in the employee lists before the Board acts on that information in making any determination which affects or determines that union's rights. The information in the lists is not only relevant but critical to a fair determination of rights in certification cases.

The Employer submitted that the disclosure was not in accordance with Part II of the Act and section 42(a) of the Act since it could be presumed to constitute an unjustified invasion of personal privacy. The Employer submitted that:

With respect to Section 42(a) and Section 21, we note that there has been no written request or consent by the individual employees involved, so that Section 21(1)(a) is inapplicable. With respect to Section 21(1)(d), there is no provision under the *Labour Relations Act* which "expressly authorizes the disclosure", so that that exception is also inapplicable. Nor can it be said that Section 21(1)(f)

applies. In this regard, we submit that Section 21(3)(d) prevails, so as to give rise to the statutory presumption contained therein that the disclosure of this personal information constitutes an unjustified invasion of privacy. None of the limitations contained in Section 21(4) apply. Section 21(4)(a) does not apply since we are not here dealing with "an individual who is or was an officer or employee of an institution...".

We have carefully considered the submissions made by both parties. In previous compliance investigations, we have held the view that the section 42(a) exception to the section 42 prohibition against disclosure of personal information only applies in the context of a request by an individual, under Part II of the Act, for personal information relating to another individual.

In this case, the Union requested, in a letter which accompanied its application for certification, that the employee lists be forwarded by the Board to the Union immediately upon receipt by the Board. No mention was made that the Union's request was pursuant to the Act. Since the circumstances of the disclosure did not involve an access request under Part II of the Act, it is our view that section 42(a) did not apply.

However, even assuming that the request by the Union was an access request under Part II of the Act, the Board would have had to comply with the provisions of Part II, in order for the disclosure to have been in accordance with section 42(a) of the Act.

Section 28(1)(b) of Part II of the Act states:

28.-(1) Before a head grants a request for access to a record,

(b) that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purposes of clause 21(1)(f),

the head shall give written notice in accordance with subsection (2) to the person to whom the information relates.

Under this section, before a head grants a request for access to a record, if the head has reason to believe that 21(1)(f) **might** apply i.e. the disclosure of the information might constitute an unjustified invasion of personal privacy, written notice must be given in accordance with section 28(2) of the Act.

In this case, it is our view that the head had had reason to believe that the disclosure of the employees' personal information might constitute an unjustified invasion of personal privacy, if simply through its considerations of the submissions made by the Employer to the Board. Therefore, in order to comply with section 28, notice would have had to have been given to the employees. In our view, since no notice was given, the disclosure cannot be said to have been in accordance with section 28 of Part II of the Act and, therefore, cannot have been in accordance with section 42(a) of the Act.

Section 42(e)

With respect to the application of section 42(e), the Board stated:

The Board also relies on section 42(e) of FIPPA. ...As explained, the Board collects the information in question so that it may do that which is required of it under section 8 of the Labour Relations Act in respect of certification applications. It is submitted that the disclosure of the employee lists is necessary in order to comply with the requirement in section 104(13) of the Labour Relations Act that the Board give "full opportunity to the parties to any proceeding to present their evidence and to make their submissions." For such an "opportunity" to have substance, an interested party must be fully informed as to the case to be met. ... Indeed, it is submitted that a refusal to supply employee lists could not be rationally supported under section 104(13) of the Labour Relations Act.

The Employer submitted the following:

We further submit that Section 42(e) does not allow for the disclosure of this personal information, since the Labour Relations Act does not require the Ontario Labour Relations Board to disclose this information to the applicant union and therefore such disclosure is not necessary "for the purpose of complying with an Act".

In our view, the Board is relying on an implicit, rather than an express, provision of the Labour Relations Act to authorize disclosure of the employee lists to the Union. There is, in fact, no express provision of the Labour Relations Act which requires the Board to disclose such information. In our view, it cannot be said that in supplying the employee lists to the Union, the Board was "complying with an Act of the Legislature" since there is no provision in the Ontario Labour Relations Act which required it to do so. Therefore, in our view, the disclosure was not in accordance with section 42(e) of the Act.

Section 42(c)

Section 42(c) of the Act states that an institution shall not disclose personal information except for the purpose for which it was obtained or compiled or for a consistent purpose. With respect to the application of section 42(c) of the Act, the Board submitted as follows:

The Board also relies on section 42(c) of FIPPA. As explained above, the information contained in employee lists is collected to allow the Board to fulfil its statutory duty in the context of a "lis" between an applicant union and respondent employer. The Board is required, as a matter of law, to determine the number and identity of employees properly in the "appropriate bargaining unit" and the parties are entitled, as a matter of law, to disclosure of (and to make representations with respect to) relevant evidential material which affects

the disposition of an essential issue in this case. Accordingly, the information is collected precisely so that it may be disclosed, as a first step in the Board making the required determination under section 8 of the [Ontario Labour Relations Act].

The Employer submitted the following:

Nor can it be said that Section 42(c) applies, since it cannot be said that the employee lists were compiled for the purpose of providing a copy thereof to the [Union]. Rather, the purpose of obtaining the employee lists was to allow the OLRB [the Board] to satisfy itself as to the number of employees in the bargaining unit or units in question so that it can in turn determine whether the Union enjoys the support of the requisite percentage of employees in each unit. It is submitted that this can be done without releasing this information to the [Union].

In our view, it seems clear that the Board obtained the employee lists for the purpose of reviewing an application for union certification pursuant to section 8 of the Ontario Labour Relations Act. If, in the course of conducting such a review, the Board decides it is appropriate for each of the parties to have access to the lists, then, in our view, the Board's disclosure of the lists to the parties is for the purpose for which they were obtained, i.e. conducting a review of the application for union certification.

Therefore, in our view, since the personal information was disclosed for the purpose for which it was obtained by the Board, the disclosure was in accordance with section 42(c) of the Act.

Conclusion: The disclosure of the personal information by the Board was in accordance with section 42(c) of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was "personal information" as defined in section 2(1) of the Act.
- The disclosure of the personal information by the Board was in accordance with section 42(c) of the Act.

Original signed by: _____
Susan Anthistle
Compliance Review Officer

October 28, 1993
Date

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INVESTIGATION REPORT

INVESTIGATION I93-031M

A TOWNSHIP

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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a named Township (the Township).

An individual complained that the Township had disclosed his personal information contrary to the provisions of the Municipal Freedom of Information and Protection of Privacy Act, (the Act). The complainant stated that he had filed a complaint with the Ontario Provincial Police (the police) concerning certain members of the Township's Council who had threatened him with violence at a council meeting. The police had then conducted an investigation but no charges were laid. According to the complainant, the Township had then obtained a copy of the police's General Occurrence Report dated April 30, 1993 (the report) and was selling the report to the public at twenty five cents a copy.

Issues Arising from the investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Was the disclosure of the personal information in accordance with section 32 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act states in part:

"personal information" means recorded information about an identifiable individual, including,

.....

- (h) **the individual's name if it appears with other personal information relating to the individual** or where the disclosure of the name would reveal other personal information about the individual; (emphasis added)

We have reviewed a copy of the report. The report contained the complainant's name together with other personal information about him, including specific statements attributed to him.

In its reply to our draft report, the Township submitted that the description of any actions or statements attributed to the complainant did not constitute "personal information" since "any and all actions described in the Incident Report arose out of a public Council meeting..."

In our view, the fact that the actions described in the report took place in an open council meeting was not relevant to the determination that the statements attributed to the complainant constituted his personal information. We remain of the view that the information contained in the report satisfied the requirements of paragraph (h) of the definition of "personal information" in section 2(1) of the Act.

Conclusion: The information in question was "personal information" as defined in section 2(1) of the Act.

Issue B: **Was the disclosure of the "personal information" in accordance with section 32 of the Act?**

Under the Act, an institution shall not disclose personal information in its custody or under its control except in the specific circumstances outlined in section 32.

The Township stated that it had relied on section 32(e) of the Act for the disclosure of the report. Section 32(e) of the Act states:

An institution shall not disclose personal information in its custody or under its control except,

- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or treaty;

The Township had requested the report from the police. When the report was received by the Township, it was made the subject of a motion at a regular meeting of Council, on June 17, 1993. It was the Township's position that the report became a Township record once it was

received as correspondence.

The Township stated that under section 73 of the Municipal Act, one of the Clerk's duties is to keep records of the Council and that section 74(1) of the Municipal Act provides that:

Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 73 and the minutes and proceedings of any committee of the council, whether the acts of the committee have been adopted or not, and other documents in possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the corporation of the municipality, to any applicant on payment at such rate as the council may by by-law establish.

It is also the Township's position that at no time did it sell copies of the report but rather, it charged the usual photocopying fee for records requested by members of the public. Therefore, according to the Township, it was permitted to disclose the report under section 74 of the Municipal Act and to provide a copy of it for a twenty five cents fee.

We have ascertained that section 74(1) of the Municipal Act was amended in 1992 to read at the beginning "Subject to the Municipal Freedom of Information and Protection of Privacy Act." Therefore, the Township was required to determine if any provisions of section 32 applied before disclosing records containing personal information under section 74(1) of the Municipal Act. We have determined that the Township did not do so in this case. It is our view that the Township's disclosure of the report was, therefore, not in accordance with section 74(1) of the Municipal Act and was, thus, not in accordance with section 32(e) of the Act.

In its submissions to our draft report, the Township stated that section 32(c) of the Act also applied to the disclosure of the complainant's personal information. This section states that:

An institution shall not disclose personal information in its custody or under its control except,

- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;

The Township stated that it had obtained the report in order to determine the status of the police investigation and to complete the Township's records with respect to this matter. In our view, the Township's subsequent disclosure of the complainant's personal information contained in the report to the public was not for the purpose for which the personal information had been obtained or compiled.

Under Section 32(c), personal information can also be disclosed for a "consistent purpose". Section 33 of the Act further provides that:

The purpose of a use or a disclosure of personal information that has been collected directly from the individual to whom the information relates is a consistent purpose under clauses 31(b) and 32(c) only if the individual might reasonably have expected such a use or disclosure.

However, in this case where the personal information had been collected **indirectly** from the complainant, a consistent purpose would be one that was "reasonably compatible" with the purpose for which the personal information had been obtained. In our view, the Township's disclosure of the complainant's personal information to the public cannot be said to have been for a purpose that was reasonably compatible with the purpose for which the personal information had been collected. In our view, the Township's disclosure was not for a consistent purpose and was, therefore, not in accordance with section 32(c) of the Act.

We have examined the other provisions of section 32 and have determined that none applied to the Township's disclosure of the report containing the complainant's personal information.

Conclusion: The Township's disclosure of the complainant's personal information was not in accordance with section 32 of the Act.

OTHER MATTERS

In its submissions on our draft report, the Township also stated that it was its view that section 27 of the Act was applicable. This section states that:

This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public.

In our view, the police created the report containing the complainant's personal information as part of its investigative process. The Township then obtained the report in order to ascertain the status of the investigation and to complete its records. It is our view that it cannot be said that the Township had obtained and was maintaining the complainant's personal information specifically for the purpose of creating a record to be made available to the public. In our view, Section 27 did not apply to the complainant's personal information.

The Township also submitted that the disclosure of the report was in accordance with sections 14(1)(c), 14(2)(a) and 16 of the Act. These sections of the Act apply to the release of personal information in response to a freedom of information access request made under Part I of the Act.

In this case, the disclosure of the complainant's personal information was not in the context of an access request under the Act to the Township for the complainant's personal information. In our view, therefore, sections 14(1)(c), 14(2)(a) and 16 of the Act did not apply.

Conclusion: Sections 14(1)(c), 14(2)(a), 16 and 27 of the Act did not apply.

SUMMARY OF CONCLUSIONS

- The information in question was "personal information" as defined in section 2(1) of the Act.
- The Township's disclosure of the complainant's personal information was not in accordance with section 32 of the Act.
- Sections 14(1)(c), 14(2)(a), 16 and 27 of the Act did not apply.

RECOMMENDATION

The Township should establish written procedures to ensure that records which contain personal information are disclosed only in accordance with the Act.

Within six months of receiving the report, the Township should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation.

Original signed by: _____
Susan Anthistle
Compliance Review Officer

December 31, 1993
Date

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INVESTIGATION REPORT

INVESTIGATION I93-031M

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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a named Township (the Township).

An individual complained that the Township had disclosed his personal information contrary to the provisions of the Municipal Freedom of Information and Protection of Privacy Act, (the Act). The complainant stated that he had filed a complaint with the Ontario Provincial Police (the police) concerning certain members of the Township's Council who had threatened him with violence at a council meeting. The police had then conducted an investigation but no charges were laid. According to the complainant, the Township had then obtained a copy of the police's General Occurrence Report dated April 30, 1993 (the report) and was selling the report to the public at twenty five cents a copy.

Issues Arising from the investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Was the disclosure of the personal information in accordance with section 32 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act states in part:

"personal information" means recorded information about an identifiable individual, including,

.....

- (h) **the individual's name if it appears with other personal information relating to the individual** or where the disclosure of the name would reveal other personal information about the individual; (emphasis added)

We have reviewed a copy of the report. The report contained the complainant's name together with other personal information about him, including specific statements attributed to him.

In its reply to our draft report, the Township submitted that the description of any actions or statements attributed to the complainant did not constitute "personal information" since "any and all actions described in the Incident Report arose out of a public Council meeting..."

In our view, the fact that the actions described in the report took place in an open council meeting was not relevant to the determination that the statements attributed to the complainant constituted his personal information. We remain of the view that the information contained in the report satisfied the requirements of paragraph (h) of the definition of "personal information" in section 2(1) of the Act.

Conclusion: The information in question was "personal information" as defined in section 2(1) of the Act.

Issue B: Was the disclosure of the "personal information" in accordance with section 32 of the Act?

Under the Act, an institution shall not disclose personal information in its custody or under its control except in the specific circumstances outlined in section 32.

The Township stated that it had relied on section 32(e) of the Act for the disclosure of the report. Section 32(e) of the Act states:

An institution shall not disclose personal information in its custody or under its control except,

- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or treaty;

The Township had requested the report from the police. When the report was received by the Township, it was made the subject of a motion at a regular meeting of Council, on June 17, 1993. It was the Township's position that the report became a Township record once it was

received as correspondence.

The Township stated that under section 73 of the Municipal Act, one of the Clerk's duties is to keep records of the Council and that section 74(1) of the Municipal Act provides that:

Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 73 and the minutes and proceedings of any committee of the council, whether the acts of the committee have been adopted or not, and other documents in possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the corporation of the municipality, to any applicant on payment at such rate as the council may by by-law establish.

It is also the Township's position that at no time did it sell copies of the report but rather, it charged the usual photocopying fee for records requested by members of the public. Therefore, according to the Township, it was permitted to disclose the report under section 74 of the Municipal Act and to provide a copy of it for a twenty five cents fee.

We have ascertained that section 74(1) of the Municipal Act was amended in 1992 to read at the beginning "Subject to the Municipal Freedom of Information and Protection of Privacy Act." Therefore, the Township was required to determine if any provisions of section 32 applied before disclosing records containing personal information under section 74(1) of the Municipal Act. We have determined that the Township did not do so in this case. It is our view that the Township's disclosure of the report was, therefore, not in accordance with section 74(1) of the Municipal Act and was, thus, not in accordance with section 32(e) of the Act.

In its submissions to our draft report, the Township stated that section 32(c) of the Act also applied to the disclosure of the complainant's personal information. This section states that:

An institution shall not disclose personal information in its custody or under its control except,

- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;

The Township stated that it had obtained the report in order to determine the status of the police investigation and to complete the Township's records with respect to this matter. In our view, the Township's subsequent disclosure of the complainant's personal information contained in the report to the public was not for the purpose for which the personal information had been obtained or compiled.

Under Section 32(c), personal information can also be disclosed for a "consistent purpose". Section 33 of the Act further provides that:

The purpose of a use or a disclosure of personal information that has been collected directly from the individual to whom the information relates is a consistent purpose under clauses 31(b) and 32(c) only if the individual might reasonably have expected such a use or disclosure.

However, in this case where the personal information had been collected **indirectly** from the complainant, a consistent purpose would be one that was "reasonably compatible" with the purpose for which the personal information had been obtained. In our view, the Township's disclosure of the complainant's personal information to the public cannot be said to have been for a purpose that was reasonably compatible with the purpose for which the personal information had been collected. In our view, the Township's disclosure was not for a consistent purpose and was, therefore, not in accordance with section 32(c) of the Act.

We have examined the other provisions of section 32 and have determined that none applied to the Township's disclosure of the report containing the complainant's personal information.

Conclusion: The Township's disclosure of the complainant's personal information was not in accordance with section 32 of the Act.

OTHER MATTERS

In its submissions on our draft report, the Township also stated that it was its view that section 27 of the Act was applicable. This section states that:

This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public.

In our view, the police created the report containing the complainant's personal information as part of its investigative process. The Township then obtained the report in order to ascertain the status of the investigation and to complete its records. It is our view that it cannot be said that the Township had obtained and was maintaining the complainant's personal information specifically for the purpose of creating a record to be made available to the public. In our view, Section 27 did not apply to the complainant's personal information.

The Township also submitted that the disclosure of the report was in accordance with sections 14(1)(c), 14(2)(a) and 16 of the Act. These sections of the Act apply to the release of personal information in response to a freedom of information access request made under Part I of the Act.

In this case, the disclosure of the complainant's personal information was not in the context of an access request under the Act to the Township for the complainant's personal information. In our view, therefore, sections 14(1)(c), 14(2)(a) and 16 of the Act did not apply.

Conclusion: Sections 14(1)(c), 14(2)(a), 16 and 27 of the Act did not apply.

SUMMARY OF CONCLUSIONS

- The information in question was "personal information" as defined in section 2(1) of the Act.
- The Township's disclosure of the complainant's personal information was not in accordance with section 32 of the Act.
- Sections 14(1)(c), 14(2)(a), 16 and 27 of the Act did not apply.

RECOMMENDATION

The Township should establish written procedures to ensure that records which contain personal information are disclosed only in accordance with the Act.

Within six months of receiving the report, the Township should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation.

Original signed by: _____
Susan Anthistle
Compliance Review Officer

December 31, 1993
Date



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

INVESTIGATION REPORT

INVESTIGATION I93-034M

A CITY



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a City. The complainant, an employee of the City, made a claim to the Worker's Compensation Board (WCB) with respect to a back injury. His claim was denied, and later, when he made a request to WCB for access to his claim file, he found that the City had disclosed information about him to WCB. His view was that some of the information disclosed was not relevant to his claim, and that the disclosure of this information to WCB breached the Municipal Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Did the records in question contain the complainant's "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Were the records in question disclosed in accordance with section 32 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Did the records in question contain the complainant's "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information" as recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,

...

- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The records in question were the complainant's Short Term Disability (STD) Report, Sick Leave Record, Employee History Record, two letters written by employees of the City to WCB, and the WCB Investigator's report.

It is our view that the above records contained information about the complainant which met the requirements in paragraphs (a), (b), (c), (g), and (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The records in question contained information which was personal information, as defined in section 2(1) of the Act.

Issue B: Were the records in question disclosed in accordance with section 32 of the Act?

The City stated that the complainant had signed a consent (i.e. a Medical Records Waiver) in accordance with section 31(a) of the Act for the release of information in his medical records.

Section 31(a) of the Act states:

An institution shall not use [emphasis added] personal information in its custody or under its control except,

- (a) if the person to whom the information relates has identified that information in particular and consented to its use;

The issue in this case is the disclosure, rather than use of the complainant's personal information. Therefore, the relevant section of the Act is section 32. Section 32 of the Act prohibits the disclosure of personal information by an institution except in the circumstances listed in section 32(a) through (l). Section 32 states in part:

An institution shall not disclose personal information in its custody or under its control except,

...

(b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;

(c) for the purpose for which it was obtained or compiled or for a consistent purpose;

...

(e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or treaty;

...

The Medical Records Waiver provided to the City by WCB stated:

This will be your authority to allow a representative of the Worker's Compensation Board of Ontario to have access to my **medical** [emphasis added] records and to receive copies thereof at [the City's] First Aid Dept.

In our view, the section of the Act pertaining to the above consent form is section 32(b). The form indicates that the complainant specifically identified his medical records and authorized them to be disclosed to WCB by the City. Since the above consent form clearly applies to the disclosure of medical records only, it is our view that the City could not rely on the above consent form to authorize the disclosure of non-medical information about the complainant. We examined the remaining disclosure provisions of section 32 and determined that section 32(c) and 32(e) applied in the circumstances of this case.

In our view, if the disclosures in question were made in accordance with sections 32(c) or (e) of the Act, it would not have been necessary for the City to obtain the complainant's consent for disclosure. Therefore, we considered sections 32(b), (c), and (e) in determining whether the Act had been breached by the City's disclosures to WCB.

Short Term Disability Report

The City stated that it was its view that the STD Report formed part of the complainant's medical record maintained by the City, and that the complainant had consented to the disclosure of this information, in accordance with section 31(a) [32(b)] of the Act when he signed the Medical Records Waiver.

We agree with the City's view that the complainant's STD report, which contained his name, employee number, dates and term of his STD claim, and the amount of STD benefits paid to him formed part of the complainant's medical record with the City. Therefore, it is our view

that complainant's personal information in the STD report was disclosed in accordance with section 32(b) of the Act.

Conclusion: The complainant's personal information in the STD report was disclosed in accordance with section 32 of the Act.

Sick Leave Record

The City stated that:

.... the disclosure of a sick leave record to the WCB for the consideration when investigating a claim for disablement that developed over the course of employment and not as the result of a specific accident is in accordance with subsection 32(c) as the use of the record is for a purpose consistent with the use for which the record was compiled.

It is our view that sections 32(b) and (c) applied to the disclosure of the complainant's personal information in the Sick Leave Record. The Sick Leave Record contained the complainant's name, employee number, and the number of hours he had taken for sick leave with/without pay, short term disability, surplus time in lieu of sick time, and compensation (WCB). It is our view that the above items formed part of the complainant's medical record with the City, and as such, were disclosed in accordance with section 32(b) of the Act. The remaining item at issue is the record of leaves of absence without pay.

The complainant's view was that the record of his leaves of absence was not relevant to his WCB claim. We asked the City why information about leaves of absence without pay would have been disclosed to WCB, since these leaves would not necessarily be taken for illnesses or injuries, or form part of an employee's medical records. The City stated that leaves of absence could be taken for a variety of reasons, including illness and injury and could be significant information when considering a claim for any disablement arising out of the nature of employment. However, the City gave no evidence to show that the leaves of absence in question had been used for illness or injuries.

Section 32(c) states that personal information may be disclosed for the purpose for which it was obtained or compiled or for a consistent purpose. In our view, the information in the Sick Leave Record would have been compiled by the City for the purpose of creating a record of absences to use in the administration of its human resources programs. The purpose for disclosing information about absences to WCB would have been to provide the Investigator with an overall picture of the complainant's absenteeism from work.

In our view, the complainant's personal information relating to his leaves of absence in the Sick Leave Record was not disclosed for the purpose for which it had been compiled by the City.

Therefore, we considered whether the City's disclosure was for a consistent purpose. Section 33 of the Act states:

The purpose of a use or disclosure of personal information that has been collected directly from the individual to whom the information relates is a consistent purpose under clauses 31(b) and 32(c) only if the individual might reasonably have expected such a use or disclosure.

Since the information in the Sick Leave Record was not collected directly from the complainant, the complainant's reasonable expectations could not be a factor in determining whether the disclosure had been made for a consistent purpose. In our view, whether the disclosure was made for a consistent purpose should be determined by considering whether the purpose for the disclosure was reasonably compatible with the purpose for which the information had been obtained or compiled by the City.

In our view, disclosing the complainant's absence information for the purpose of providing the WCB Investigator with an overall picture of the complainant's absenteeism with the City is reasonably compatible with the purpose for which the City compiled the information - to create a record of the complainant's absenteeism for use in administering its human resources programs. Therefore, it is our view that in the circumstances of this case, the disclosure of the record of leaves of absence was made in accordance with section 32(c) of the Act, for a consistent purpose.

Conclusions: The complainant's personal information that formed part of his medical records in the Sick Leave Record was disclosed in accordance with section 32 of the Act.

The complainant's personal information in his leave of absence record was disclosed in accordance with section 32 of the Act.

Employee History Record

The City stated that the Employee History Record was disclosed in accordance with section 32(e) of the Act (i.e. in order to comply with an Act of the Legislature) upon request from the WCB Investigator. The City referred to section 133(1) of the Workers' Compensation Act (WCA), which states:

Every employer, within three days after learning of the happening of an accident to a worker in the employer's employment by which the worker is disabled shall notify the Board in writing of,

- (a) the happening of the accident and the nature of it;

- (b) the time of its occurrence;
- (c) the name and address of the worker
- (d) the place where the accident happened
- (e) the name and address of the physician or surgeon, if any, by whom the worker was or is attended for the injury,

and shall in any case furnish such further details and particulars respecting any accident or claim to compensation as the Board may require.

As we understand the situation, the complainant's WCB claim was not made as the result of a specific accident, but rather was for an injury which developed over the course of employment. In our view, WCB would have had to require details or particulars respecting the complainant's claim to compensation, in order for section 133 of the WCA to apply in the circumstances of this case.

In our view, some items of the complainant's personal information in the Employee History record were details or particulars respecting the complainant's claim (e.g. name, position, birthdate, seniority date, retirement date). Since WCB had required that the City furnish information respecting the claim, we conclude that the disclosure of this personal information was made in accordance with section 32(e) of the Act, for the purpose of complying with an Act of the Legislature.

However, in our view, some items of the complainant's personal information in his Employee History Record were not details or particulars respecting the claim (e.g. records of suspensions from driving for speeding). Since the WCA states that the employer is to "furnish such further details and particulars respecting anyclaim to compensation", it is our view that section 133 of the WCA would not apply in the circumstances of the disclosure of details or particulars which, in our view, did not pertain to the complainant's claim . Therefore, we conclude that the disclosure of this personal information was not made in accordance with section 32(e) of the Act, for the purpose of complying with an Act of the Legislature. It is our view that no other sections of the Act applied to the disclosure of this information.

Conclusions: The items of the complainant's personal information in the Employee History Record that were details respecting the claim were disclosed in accordance with section 32 of the Act.

The items of complainant's personal information in the Employee History Record that were not details respecting the claim were not disclosed in accordance with section 32 of the Act.

Letter to WCB from General Superintendent of Operations

The City stated that the information contained in the letter was requested by WCB and was disclosed pursuant to section 32(e) of the Act.

The letter contained the complainant's name, employee number, date of employment with the City, amount of accumulated sick time by a certain date, and the rate at which sick time would have been earned. In our view, these were details respecting the claim. Since the above items of information were details or particulars respecting the claim, and WCB had required that the City furnish the information, we conclude that the disclosure was made in accordance with section 32(e) of the Act, for the purpose of complying with an Act of the Legislature.

Conclusion: The complainant's personal information in the letter to WCB from the General Superintendent of Operations was disclosed in accordance with section 32 of the Act.

Letter to WCB from Co-ordinator, Rehabilitation and Claims Administration

The letter to WCB from the Co-ordinator, Rehabilitation and Claims Administration, contained the complainant's name, social insurance number, details of his current and previous claims, details of his STD claim, his current position, the fact that he had been assigned to light duties, and his physical restrictions. This letter, which accompanied the WCB claim form, stated, "Obviously, this claim warrants your investigation".

The claim form contained the question, "Do you have any reason to doubt the history of injury?", to which the City had answered "Yes". "See attached letter" was typed at the bottom of this section of the form.

It is our view that the City's purpose for compiling the complainant's personal information in the above letter was to provide WCB with further information concerning its reasons for doubting the history of the claim, and to request an investigation.

It is our view that the complainant's personal information in the letter was disclosed for the purpose for which it had been compiled by the City - to provide further information concerning its reasons for doubting the history of the claim, and to request an investigation. Therefore, it is our view that the complainant's personal information was disclosed in accordance with section 32(c) of the Act, for the purpose for which it was compiled.

Conclusion: The complainant's personal information in the letter to WCB from the Co-ordinator, Rehabilitation and Claims Administration was disclosed in accordance with section 32 of the Act.

WCB Investigator's Report

As previously stated, our view is that the WCB Investigator's report contained the complainant's personal information, including City employees' opinions regarding the complainant. This information was apparently recorded by the WCB Investigator as a result of her interview with City employees. The complainant believed that the comments made were prejudicial to his claim. The comments attributed to the City employees were as follows:

Comment #1:

[employee] advised me that [complainant] is a complainer and complains about everything.

Comment #2:

[employee] elaborated indicating that [complainant] was a bit of a hypochondriac. He always seemed to have something wrong with him...

Comment #3:

[employee] indicated that the injured worker was a good worker when he originally commenced working for [the City]...

The City stated that "the comments noted were verbal comments and opinions that did not form part of any record as defined in the act". We agree with the City that the comments made were verbal. It is our view that comments #1 and #2 did not contain information that would have been a matter of record with the City, and that the Act did not apply to these disclosures.

However, Comment #3 contained information about the complainant's job performance that had been recorded by the City on the Employee History Record approximately six months after he was hired (i.e. "LAYOFF-EXCELLENT EMPLOYEE-WOULD REHIRE"). In her report, the WCB Investigator referred to the fact that the information had been recorded, stating:

[employee] indicated that the injured worker was a good worker when he originally commenced working for [the City] **as noted in the Employee History Record which was supplied to me by the employer.** [emphasis added]

Therefore, it is our view that the Act applied to this disclosure. The City stated that the comments made to the WCB Investigator were in response to questions asked by her during the interviews. Accordingly, it is our view that section 32(e) of the Act applied to the disclosure. It is our view that the complainant's personal information in Comment #3 was details or particulars respecting his claim. Since WCB had required that the City furnish the information,

by asking questions during an interview, we conclude that the disclosure of this personal information was made in accordance with section 32(e) of the Act, for the purpose of complying with an Act of the Legislature.

Therefore, it is our view that the disclosure of the complainant's personal information in Comment #3 was made in accordance with section 32 of the Act.

Conclusions: The Act did not apply to Employee Comments #1 and #2 in the WCB Investigator's report.

The complainant's personal information in Employee Comment #3 in the WCB Investigator's report was disclosed in accordance with section 32 of the Act.

Other Matters

During the course of this investigation, the following matter was identified and brought to the City's attention:

The complainant's Employee History Record contained a reference to another employee. The City acknowledged that third party information that should have been severed was disclosed to WCB inadvertently.

SUMMARY OF CONCLUSIONS

- The records in question contained information which was personal information, as defined in section 2(1) of the Act.
- The complainant's personal information in the STD report was disclosed in accordance with section 32 of the Act.
- The complainant's personal information that formed part of his medical records in the Sick Leave Record was disclosed in accordance with section 32 of the Act.
- The complainant's personal information in his leave of absence record was disclosed in accordance with section 32 of the Act.
- The items of the complainant's personal information in the Employee History Record that were details respecting the claim were disclosed in accordance with section 32 of the Act.
- The items of the complainant's personal information in the Employee History Record that

were not details respecting the claim were not disclosed in accordance with section 32 of the Act.

- The complainant's personal information in the letter to WCB from the General Superintendent of Operations was disclosed in accordance with section 32 of the Act.
- The complainant's personal information in the letter to WCB from the Co-ordinator, Rehabilitation and Claims Administration was disclosed in accordance with section 32 of the Act.
- The Act did not apply to Employee Comments #1 and #2 in the WCB Investigator's report.
- The complainant's personal information in Employee Comment #3 in the WCB Investigator's report was disclosed in accordance with section 32 of the Act.

RECOMMENDATIONS

We recommend that the City incorporate the following into its procedures:

that personal information not respecting an accident or claim be severed from records that are provided to WCB.

Within six months of receiving this report, the City should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation.

Susan Anthistle
Compliance Review Officer

Date

CAZON

IP

-I56

INVESTIGATION REPORT

INVESTIGATION I93-037P

WORKERS' COMPENSATION BOARD

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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Workers' Compensation Board (the Board).

The complainant stated that the Board had collected and disclosed information concerning her sexual life to her employer, and to her former claim representative, in contravention of the Freedom of Information and Protection of Privacy Act (the Act).

The information was contained in a psychiatrist's Non Economic Loss Assessment and cover letter to the Board (the NEL), relating to the complainant's claim for Chronic Pain Disability. The NEL contained information concerning the complainant's medical condition and her sexual life with her spouse.

The Workers' Compensation Act has established a two-track benefit system for workers who suffer permanent consequences because of their workplace injuries. It provides compensation for the permanent impairment (the non-economic loss award for the loss of enjoyment of everyday life) and the future loss of earnings (the economic loss award for the employment impact) which result from the injury.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information contained in the NEL "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Did the Board have the authority to collect the personal information, in accordance with section 38(2) of the Act?
- (C) Was the personal information disclosed in accordance with section 42 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information contained in the NEL "personal information" as defined

in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information", in part, as:

recorded information about an identifiable individual, including,

- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

We reviewed a copy of the NEL. It contained the complainant's name together with information about the complainant's medical condition and her sexual life with her spouse.

It is our view that the information contained in the NEL met the requirements of paragraph (h) of the definition of "personal information" in section 2(1) of the Act.

Conclusion: The information contained in the NEL was personal information as defined in section 2(1) of the Act.

Issue B: Did the Board have the authority to collect the personal information, in accordance with section 38(2) of the Act?

Section 38(2) of the Act states:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or **necessary to the proper administration of a lawfully authorized activity**. (emphasis added)

The Board stated that to properly make a NEL assessment, and to fairly determine the amount of compensation due to the complainant, collection of the information concerning her sexual life was necessary to the proper administration of a lawfully authorized activity.

The Board referred us to section 42 of the Workers' Compensation Act (the WCA), which addresses NEL assessments. Sections 42(1) and (5), in particular, state:

- (1) A worker who suffers permanent impairment as a result of an injury is entitled to receive compensation for non-economic loss in addition to any other benefit receivable under this Act.
- (5) The Board shall determine in accordance with the prescribed rating

schedule and having regard to medical assessments conducted under this section the degree of a worker's permanent impairment expressed as a percentage of total permanent impairment.

Based on the above provisions of the WCA, it is our view that conducting a NEL medical assessment to determine the compensation due to a worker who has suffered permanent impairment as a result of an injury, is a lawfully authorized activity.

With regard to whether the collection of information concerning a worker's sexual life is "necessary" to conducting NEL assessments, the Board advised us of the following.

The Board stated that when considering the amount of compensation for a NEL award, it is important that a psychiatrist fully assess four areas of functioning, in determining the severity of impairment for the purposes of determining an award in cases of Chronic Pain Disability.

The Board has adopted the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment. These areas are:

- 1) Activities of Daily Living
- 2) Social Functioning
- 3) Concentration, persistence and pace
- 4) Ability to adapt to stress circumstances.

The Board explained that the more comprehensive the examination of these areas, the more accurate the evaluation of the extent of the impairment. Under Activities of Daily Living, the AMA Guides specify this to include activities such as "self care and personal hygiene, communication, ambulation, attaining all normal living posture, travel, non specialized hand activities, **sexual function**, social and recreational activities". The Guides also state that "what is assessed is not simply the number of activities that are restricted but the overall degree of restrictions or combination of restrictions". It is in this context that questions are asked by the physician about a worker's sexual life. It is an aspect of functioning that can be impaired by a worker's injury. If it is impaired, then the worker's award should reflect that impairment in the context of his/her functioning in this and all the other areas examined.

The Board stressed that it is important to understand that this is an extensive evaluation of the impact of the worker's pain on his or her everyday life, and not just his/her work. This allows for compensation for changes from pre-accident levels of functioning. While sexual function may be a more sensitive area that is being assessed, it is no less important than the many other activities being examined to arrive at an award. In short, questions of a sexual nature are necessary to conduct a thorough assessment.

Based on the above, it is our view that the Board had the authority to collect the information

concerning the complainant's sexual life, as it was necessary to the proper administration of a lawfully authorized activity, that being, the conduct of a NEL medical assessment to determine appropriate compensation. Thus, the Board collected the complainant's personal information in accordance with section 38(2) of the Act.

Conclusion: The Board had the authority to collect the personal information, in accordance with section 38(2) of the Act.

Issue C: Was the personal information disclosed in accordance with section 42 of the Act?

The complaint concerns disclosure to a) the complainant's employer, and b) the complainant's former representative in her claim with the Board.

Disclosure to the Employer

Under the Act, personal information in the custody or under the control of an institution cannot be disclosed except in the specific circumstances outlined in section 42.

Section 42(e) of the Act states:

An institution shall not disclose personal information in its custody or under its control except,

- (e) for the **purpose of complying with an Act of the Legislature** or an Act of Parliament or a treaty, agreement or arrangement thereunder; (emphasis added)

The Board cited section 42(12) of the WCA as its legislative authority for disclosure to the employer, in accordance with section 42(e) of the Act.

Section 42(12) of the WCA requires the Board to send a copy of the NEL to the accident employer. It states:

(12) The Board shall send a copy of the medical assessment conducted under subsection (9) to the worker and to the employer who employed the worker on the date of the injury.

In our view, the Board's disclosure of the complainant's personal information to the employer was in accordance with section 42(e) of the Act, for the purpose of complying with an Act of the Legislature.

Disclosure to the Complainant's Former Representative

Injured workers may elect to have a representative of their choosing represent them in claims with the Board. Despite a letter on the Board's file from the complainant dated June 11, 1992, advising that she had replaced her representative, the Board acknowledged that it had faxed a copy of the NEL to the complainant's former representative.

However, in support of this disclosure, the Board stated that the complainant had changed her representative on several occasions, and that the former representative had telephoned the NEL Manager, requesting a copy of the NEL.

We were advised by the Board that it is the responsibility of the Adjudicator to make updates such as a change of representative on the "PARS" computer system. A clerk accesses "PARS" to obtain the address of the representative. In this case, it appears that the computer was not updated in a timely fashion. As a result, a disclosure to the complainant's former representative was made in error.

We examined section 42(b) of the Act with respect to this disclosure. This section states:

An institution shall not disclose personal information in its custody or under its control except

- (b) where the person to whom the information relates has identified that information in particular and consented to its disclosure;

However, we are of the view that the complainant did not identify the personal information and consent to its disclosure to her former representative. In our view, the Board's disclosure of the complainant's personal information to her former representative was not in accordance with section 42(b), or with any other provisions of section 42 of the Act.

Conclusion: The Board's disclosure of the NEL to the employer was in accordance with section 42 of the Act.

The Board's disclosure of the NEL to the complainant's former representative was not in accordance with section 42 of the Act.

Other Matters

During the course of this investigation, the following matters were identified which should be brought to the Board's attention.

Mailing Procedures for NELs

We asked the Board about the manner in which NELs are sent to employers. We were advised that employers' mailing addresses are identified on the computer system. If the employer has designated a named individual for its correspondence on a claim, the Adjudicator will update the system to state attention to this individual and the NEL would be sent, addressed accordingly. Accompanying the NEL is a cover letter reminding the employer of its obligation under the WCA to not disclose the information. Confidential envelopes are not used.

We are concerned that the Board does not use confidential envelopes when mailing NELs to employers, and that where an appropriate official has not been identified, sensitive medical information may be viewed unnecessarily by the employer's staff, eg. individuals responsible for opening and delivering the employer's mail.

Faxing of the NEL

While this complaint did not concern the improper disclosure of personal information through the faxing of the NEL, we nonetheless wish to simply remind the Board of our faxing guidelines, since it is evident from the circumstances of this complaint that the Board has used a facsimile machine to transmit sensitive personal information. Accordingly, we have enclosed a copy of the following documents: "Guidelines on Facsimile Transmission Security, June 1989" and "Update on 1989 Guidelines on Facsimile Transmission Security, June 1990".

SUMMARY OF CONCLUSIONS

- The information contained in the NEL was personal information as defined in section 2(1) of the Act.
- The Board had the authority to collect the personal information, in accordance with section 38(2) of the Act.
- The Board's disclosure of the NEL to the employer was in accordance with section 42 of the Act.
- The Board's disclosure of the NEL to the complainant's former representative was not in accordance with section 42 of the Act.

RECOMMENDATIONS

1. We recommend that the Board take steps to ensure that adjudicators update the information in their computers as soon as they are notified of a change of representative; for example, by sending a memorandum to appropriate staff, i.e. adjudicators and their supervisors to remind them of this procedure.
2. We recommend that the Board use confidential envelopes when mailing out medical information to employers. The envelopes should be addressed to a named officer, where this individual has been identified by the employer. If an officer has not been designated, a generic title should be used, for example, "WCB Claims Administrator".

Within six months of receiving this report, the Board should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendations.

Original signed by: _____
Susan Anthistle
Compliance Review Officer

November 26, 1993
Date

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INVESTIGATION REPORT

INVESTIGATION I93-037P

WORKERS' COMPENSATION BOARD

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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Workers' Compensation Board (the Board).

The complainant stated that the Board had collected and disclosed information concerning her sexual life to her employer, and to her former claim representative, in contravention of the Freedom of Information and Protection of Privacy Act (the Act).

The information was contained in a psychiatrist's Non Economic Loss Assessment and cover letter to the Board (the NEL), relating to the complainant's claim for Chronic Pain Disability. The NEL contained information concerning the complainant's medical condition and her sexual life with her spouse.

The Workers' Compensation Act has established a two-track benefit system for workers who suffer permanent consequences because of their workplace injuries. It provides compensation for the permanent impairment (the non-economic loss award for the loss of enjoyment of everyday life) and the future loss of earnings (the economic loss award for the employment impact) which result from the injury.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information contained in the NEL "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Did the Board have the authority to collect the personal information, in accordance with section 38(2) of the Act?
- (C) Was the personal information disclosed in accordance with section 42 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information contained in the NEL "personal information" as defined

in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information", in part, as:

recorded information about an identifiable individual, including,

- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

We reviewed a copy of the NEL. It contained the complainant's name together with information about the complainant's medical condition and her sexual life with her spouse.

It is our view that the information contained in the NEL met the requirements of paragraph (h) of the definition of "personal information" in section 2(1) of the Act.

Conclusion: The information contained in the NEL was personal information as defined in section 2(1) of the Act.

Issue B: Did the Board have the authority to collect the personal information, in accordance with section 38(2) of the Act?

Section 38(2) of the Act states:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or **necessary to the proper administration of a lawfully authorized activity**. (emphasis added)

The Board stated that to properly make a NEL assessment, and to fairly determine the amount of compensation due to the complainant, collection of the information concerning her sexual life was necessary to the proper administration of a lawfully authorized activity.

The Board referred us to section 42 of the Workers' Compensation Act (the WCA), which addresses NEL assessments. Sections 42(1) and (5), in particular, state:

- (1) A worker who suffers permanent impairment as a result of an injury is entitled to receive compensation for non-economic loss in addition to any other benefit receivable under this Act.
- (5) The Board shall determine in accordance with the prescribed rating

schedule and having regard to medical assessments conducted under this section the degree of a worker's permanent impairment expressed as a percentage of total permanent impairment.

Based on the above provisions of the WCA, it is our view that conducting a NEL medical assessment to determine the compensation due to a worker who has suffered permanent impairment as a result of an injury, is a lawfully authorized activity.

With regard to whether the collection of information concerning a worker's sexual life is "necessary" to conducting NEL assessments, the Board advised us of the following.

The Board stated that when considering the amount of compensation for a NEL award, it is important that a psychiatrist fully assess four areas of functioning, in determining the severity of impairment for the purposes of determining an award in cases of Chronic Pain Disability.

The Board has adopted the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment. These areas are:

- 1) Activities of Daily Living
- 2) Social Functioning
- 3) Concentration, persistence and pace
- 4) Ability to adapt to stress circumstances.

The Board explained that the more comprehensive the examination of these areas, the more accurate the evaluation of the extent of the impairment. Under Activities of Daily Living, the AMA Guides specify this to include activities such as "self care and personal hygiene, communication, ambulation, attaining all normal living posture, travel, non specialized hand activities, **sexual function**, social and recreational activities". The Guides also state that "what is assessed is not simply the number of activities that are restricted but the overall degree of restrictions or combination of restrictions". It is in this context that questions are asked by the physician about a worker's sexual life. It is an aspect of functioning that can be impaired by a worker's injury. If it is impaired, then the worker's award should reflect that impairment in the context of his/her functioning in this and all the other areas examined.

The Board stressed that it is important to understand that this is an extensive evaluation of the impact of the worker's pain on his or her everyday life, and not just his/her work. This allows for compensation for changes from pre-accident levels of functioning. While sexual function may be a more sensitive area that is being assessed, it is no less important than the many other activities being examined to arrive at an award. In short, questions of a sexual nature are necessary to conduct a thorough assessment.

Based on the above, it is our view that the Board had the authority to collect the information

concerning the complainant's sexual life, as it was necessary to the proper administration of a lawfully authorized activity, that being, the conduct of a NEL medical assessment to determine appropriate compensation. Thus, the Board collected the complainant's personal information in accordance with section 38(2) of the Act.

Conclusion: The Board had the authority to collect the personal information, in accordance with section 38(2) of the Act.

Issue C: Was the personal information disclosed in accordance with section 42 of the Act?

The complaint concerns disclosure to a) the complainant's employer, and b) the complainant's former representative in her claim with the Board.

Disclosure to the Employer

Under the Act, personal information in the custody or under the control of an institution cannot be disclosed except in the specific circumstances outlined in section 42.

Section 42(e) of the Act states:

An institution shall not disclose personal information in its custody or under its control except,

- (e) for the **purpose of complying with an Act of the Legislature** or an Act of Parliament or a treaty, agreement or arrangement thereunder; (emphasis added)

The Board cited section 42(12) of the WCA as its legislative authority for disclosure to the employer, in accordance with section 42(e) of the Act.

Section 42(12) of the WCA requires the Board to send a copy of the NEL to the accident employer. It states:

- (12) The Board shall send a copy of the medical assessment conducted under subsection (9) to the worker and to the employer who employed the worker on the date of the injury.

In our view, the Board's disclosure of the complainant's personal information to the employer was in accordance with section 42(e) of the Act, for the purpose of complying with an Act of the Legislature.

Disclosure to the Complainant's Former Representative

Injured workers may elect to have a representative of their choosing represent them in claims with the Board. Despite a letter on the Board's file from the complainant dated June 11, 1992, advising that she had replaced her representative, the Board acknowledged that it had faxed a copy of the NEL to the complainant's former representative.

However, in support of this disclosure, the Board stated that the complainant had changed her representative on several occasions, and that the former representative had telephoned the NEL Manager, requesting a copy of the NEL.

We were advised by the Board that it is the responsibility of the Adjudicator to make updates such as a change of representative on the "PARS" computer system. A clerk accesses "PARS" to obtain the address of the representative. In this case, it appears that the computer was not updated in a timely fashion. As a result, a disclosure to the complainant's former representative was made in error.

We examined section 42(b) of the Act with respect to this disclosure. This section states:

An institution shall not disclose personal information in its custody or under its control except

- (b) where the person to whom the information relates has identified that information in particular and consented to its disclosure;

However, we are of the view that the complainant did not identify the personal information and consent to its disclosure to her former representative. In our view, the Board's disclosure of the complainant's personal information to her former representative was not in accordance with section 42(b), or with any other provisions of section 42 of the Act.

Conclusion: The Board's disclosure of the NEL to the employer was in accordance with section 42 of the Act.

The Board's disclosure of the NEL to the complainant's former representative was not in accordance with section 42 of the Act.

Other Matters

During the course of this investigation, the following matters were identified which should be brought to the Board's attention.

Mailing Procedures for NELs

We asked the Board about the manner in which NELs are sent to employers. We were advised that employers' mailing addresses are identified on the computer system. If the employer has designated a named individual for its correspondence on a claim, the Adjudicator will update the system to state attention to this individual and the NEL would be sent, addressed accordingly. Accompanying the NEL is a cover letter reminding the employer of its obligation under the WCA to not disclose the information. Confidential envelopes are not used.

We are concerned that the Board does not use confidential envelopes when mailing NELs to employers, and that where an appropriate official has not been identified, sensitive medical information may be viewed unnecessarily by the employer's staff, eg. individuals responsible for opening and delivering the employer's mail.

Faxing of the NEL

While this complaint did not concern the improper disclosure of personal information through the faxing of the NEL, we nonetheless wish to simply remind the Board of our faxing guidelines, since it is evident from the circumstances of this complaint that the Board has used a facsimile machine to transmit sensitive personal information. Accordingly, we have enclosed a copy of the following documents: "Guidelines on Facsimile Transmission Security, June 1989" and "Update on 1989 Guidelines on Facsimile Transmission Security, June 1990".

SUMMARY OF CONCLUSIONS

- The information contained in the NEL was personal information as defined in section 2(1) of the Act.
- The Board had the authority to collect the personal information, in accordance with section 38(2) of the Act.
- The Board's disclosure of the NEL to the employer was in accordance with section 42 of the Act.
- The Board's disclosure of the NEL to the complainant's former representative was not in accordance with section 42 of the Act.

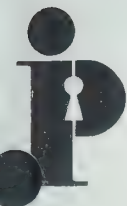
RECOMMENDATIONS

1. We recommend that the Board take steps to ensure that adjudicators update the information in their computers as soon as they are notified of a change of representative; for example, by sending a memorandum to appropriate staff, i.e. adjudicators and their supervisors to remind them of this procedure.
2. We recommend that the Board use confidential envelopes when mailing out medical information to employers. The envelopes should be addressed to a named officer, where this individual has been identified by the employer. If an officer has not been designated, a generic title should be used, for example, "WCB Claims Administrator".

Within six months of receiving this report, the Board should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendations.

Original signed by: _____
Susan Anthistle
Compliance Review Officer

November 26, 1993
Date



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

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INVESTIGATION REPORT

INVESTIGATION I93-041P

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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of the Attorney General, Police Complaints Commissioner (previously known as the Public Complaints Commissioner).

The complainant wrote a letter to the Chief of Police of Metropolitan Toronto in December of 1990. In the letter, she complained about the conduct of police officers, and the conduct of two doctors. The Deputy Chief of Police sent a copy of her letter to the Police Complaints Commissioner (the PCC), because the complaint involved police officers. However, the Metropolitan Toronto Police Force Complaint Act was not in effect at the time of the incidents involving the police officers, so the complaints about the police were not within the jurisdiction of the PCC. The PCC wrote to the Director of Investigations of the College of Physicians and Surgeons of Ontario (the College), enclosing a copy of the complainant's letter (with the names of the police officers severed), and a copy of the letter from the Deputy Chief of Police.

The Police Complaints Commissioner then wrote to the Deputy Chief of Police explaining that the complaints did not fall within his jurisdiction, stating that a copy of the complainant's letter had been sent to the College. The Police Complaints Commissioner also wrote to the complainant on December 19, 1990, explaining that her complaint did not fall under his jurisdiction. However, this letter did not mention that a copy of the complaint letter had been forwarded to the College.

Later, the College investigated the complaints about the doctors, and the complainant appealed the College's decision to the Health Disciplines Board (the Board). The Board received a copy of the College's file containing the copies of the complainant's letter and the letters from the Deputy Chief of Police and the PCC. When the complainant asked the Board for disclosure of records, she found copies of the correspondence, and believed that her privacy had been breached by the disclosure of her letter by the PCC to the College.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Did the complainant's letter contain her "personal information", as defined in section 2(1) of the Freedom of Information and Protection of Privacy Act (the Act)?

If the answer to the above question is yes,

- (B) Was the personal information disclosed by the PCC in accordance with section 42 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Did the complainant's letter contain her "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information" as recorded information about an identifiable individual, including, but not limited to,

...

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

...

- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,

...

- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

In our view, the letter from the complainant contained recorded information about her. Most of this recorded information fell into two main categories:

1. information related to her complaints about the police;
2. information related to her complaints about the doctors.

The letter also contained other recorded information about the complainant that did not fall into either of these categories.

The recorded information about the complainant which related to her complaints about the police included:

- her view that she had been denied proper service and protection by the police;
- the fact that she had made previous complaints to the "Public Complaints Department"; the results of those complaints;
- the fact that she was arrested by the police for trespassing, and that she had to go to court;
- the fact that she was removed by the police from an alderman's office, from a mental health rehabilitation centre, and from a hospital;
- the fact that she felt harassed by the police and had made enquiries about how the police approached her.

In our view, the above information meets the definition of "personal information" in section 2(1) of the Act (i.e. recorded information about an identifiable individual).

The recorded information about the complainant which related to her complaints about the doctors included:

- the fact that she had been hospitalized at a named hospital on certain dates;
- her view that she had not been treated in a professional manner by two doctors, and her account of what had taken place at the hospital;
- the fact that "medical affairs" at the hospital refused to investigate her complaints;
- the fact that a certain drug had been prescribed for her.

In our view, the above information meets the definition of "personal information" in section 2(1) of the Act (i.e. recorded information about an identifiable individual).

Other recorded information about the complainant that was not related to her complaints about the police or doctors included:

- the fact that the complainant was facing eviction from her home, and that she was to appear in court;
- her view that she felt pressured on all sides;
- her name and address;
- the fact that she had made complaints about personnel at a mental health rehabilitation centre.

In our view, the above information meets the definition of "personal information" in section 2(1) of the Act (i.e. recorded information about an identifiable individual).

In summary, the complainant's letter contained her personal information, relating to her complaints about the police and the doctors, and also contained other recorded information about

her, not related to either of these complaints. In our view, this recorded information meets the definition of personal information in section 2(1) of the Act.

Conclusion: The complainant's letter contained her "personal information" as defined in section 2(1) of the Act.

Issue B: Was the personal information disclosed by the PCC in accordance with section 42 of the Act?

Section 42 of the Act sets out the rules for disclosure of personal information other than to the individual to whom the information relates. This section provides that an institution shall not disclose personal information in its custody or under its control, except in the circumstances listed in paragraphs (a) through (p). We have examined the provisions of these sections, and determined that only paragraph 42(c) applied to the disclosure of the personal information in the circumstances of this case. Section 42(c) states:

An institution shall not disclose personal information in its custody or under its control except,

...

(c) for the purpose for which it was obtained or compiled or for a consistent purpose;

...

In determining whether the Act was breached, we considered the two main categories of personal information contained in the letter (i.e. information relating to the complaints about the police and information relating to the complaints about the doctors), as well as the other recorded information about the complainant that did not fall into these two categories.

The complainant believed that the disclosure of the letter containing her personal information by the PCC to the College breached her privacy. The PCC's position was that the letter had been disclosed in accordance with section 42(c) of the Act, for a consistent purpose. In our view, in order for the disclosure to have been made for a consistent purpose, the disclosure must be reasonably compatible with the purpose for which the personal information was obtained or compiled.

In response to our draft report, the complainant stated her view that there was no consistent purpose in the PCC's disclosing her letter to the College. She went on to say that the action of

the PCC was of no benefit to the College, that the College was not assisted by the efforts of the PCC and that she did not believe any investigation of her complaints about medical personnel was done by the PCC. However, in our view, the PCC could not control how the matter of the complaints might eventually be handled by the College, or whether the complainant might ultimately be satisfied with the results. Therefore, although we have carefully considered the complainant's position, in our view, **the situation at the time the letter was forwarded** to the College is the situation that we must consider in determining whether the disclosure was made for a consistent purpose.

The situation at the time the letter was forwarded to the College was that the complainant's letter was originally sent to the PCC by the Deputy Chief of Police for the purpose of having the PCC investigate the complaints that were contained in the letter. Therefore, the PCC obtained the letter for the purpose of investigating the complaints.

In our view, the disclosure of the complainant's personal information relating to her complaints about the doctors was reasonably compatible with the purpose for which the PCC obtained the complaint letter. The PCC had originally received the letter in order to investigate her complaints, and the College had the jurisdiction to investigate the complaints about the doctors. Since we find that the disclosure of the complainant's personal information relating to the complaints about the doctors was reasonably compatible with the purpose for which the personal information was obtained, we find that the disclosure was made in accordance with section 42(c) of the Act, for a consistent purpose.

Although the PCC was unable to investigate the complaints, because they were not within the PCC's jurisdiction, the PCC was aware that another investigative body (the College) had the jurisdiction to investigate complaints about doctors, and therefore, the PCC forwarded the letter of complaint to the College.

However, the College, as we understand its mandate, does not have the jurisdiction to investigate complaints about police officers. Therefore, in our view, the disclosure of the complainant's personal information relating to her complaints about the police **was not** reasonably compatible with the purpose for which the PCC obtained the letter. Since we find that the disclosure of the complainant's personal information relating to her complaints about the police was not reasonably compatible with the purpose for which the personal information was obtained, we find that the disclosure was not made in accordance with section 42(c) of the Act, for a consistent purpose.

Similarly, we find that the disclosure of the personal information relating to other matters, such as the complainant's being evicted, and her view that she felt pressured, **was not** reasonably compatible with the purpose for which the personal information was obtained, since the College could not investigate these matters. Since we find that these disclosures were not reasonably compatible with the purpose for which the personal information had been obtained, we find that

these disclosures were not made in accordance with the section 42(c) of the Act, for a consistent purpose.

In response to our draft report, the complainant stated her view that her name and address were not disclosed to the College by the PCC in accordance with the Act. We have carefully considered the complainant's view, including whether her complaint could have effectively been dealt with had her identity remained anonymous. However, in our view, the College would need to be able to identify the complainant and contact her to respond to her complaints. As mentioned previously, we have considered **the situation at the time the letter was forwarded** in taking this view.

The purpose for which the College had obtained the complainant's name and address was to identify her, and respond to her complaint. Therefore, we find that the disclosure of the complainant's name and address to the College was reasonably compatible with the purpose for which it had been obtained by the PCC, which was to identify the complainant, and respond to her concerns. Since we find that the disclosure of the complainant's name and address was reasonably compatible with the purpose for which the personal information was obtained, we find that the disclosure was made in accordance with section 42(c) of the Act, for a consistent purpose.

Conclusions: The personal information relating to the complaints about the doctors was disclosed by the PCC in accordance with section 42 of the Act.

The personal information relating to the complaints about the police was not disclosed by the PCC in accordance with section 42 of the Act.

The personal information not relating to the complaints about the police or doctors was not disclosed by the PCC in accordance with section 42 of the Act.

The complainant's name and address were disclosed by the PCC in accordance with section 42 of the Act.

SUMMARY OF CONCLUSIONS

- The complainant's letter contained her "personal information" as defined in section 2(1) of the Act.
- The personal information relating to the complaints about the doctors was disclosed by the PCC in accordance with section 42 of the Act.

- The personal information relating to the complaints about the police was not disclosed by the PCC in accordance with section 42 of the Act.
- The personal information not relating to the complaints about the police or doctors was not disclosed by the PCC in accordance with section 42 of the Act.
- The complainant's name and address were disclosed by the PCC in accordance with section 42 of the Act.

RECOMMENDATIONS

In making our recommendations, we acknowledge that the PCC forwarded the complainant's complete letter to the College with the intention of providing a service to the complainant (i.e. to try to ensure that her complaints were brought to the attention of the proper investigative body). We also acknowledge that the PCC severed the names of the police officers from the letter, with a view to protecting their privacy.

We recommend the following procedures be incorporated into the PCC's complaint process:

1. that when the PCC receives a complaint and forwards it to another investigative body with the proper jurisdiction to investigate the complaint, the PCC sever any personal information that is not related to the complaint and is not necessary to the proper administration of the complaint;
2. that the PCC advise individuals if their complaints are being forwarded to another investigatory body.

Within six months of receiving this report, the PCC should provide our Office with proof of compliance with the above recommendations.

Original signed by: _____
Susan Anthistle
Compliance Review Officer

August 31, 1993
Date



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INVESTIGATION REPORT

INVESTIGATION I93-043M

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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a board of education (the Board).

The complainant wrote that she had filed access requests with the Board, pursuant to the provisions of the Municipal Freedom of Information and Protection of Privacy Act (the Act).

She complained that the Board, on receipt of her access requests, had "investigated" her and found out her first name and sex. She complained that the Board had then wrongly disclosed her first name and sex to its law firm. The complainant discovered this disclosure when the law firm wrote her two letters, using her first name and "Ms" which indicated that she was female. The complainant wrote that she had never disclosed her first name or her sex in her access requests.

The Board had previously informed her that its Freedom of Information and Protection of Privacy Co-ordinator (the Co-ordinator) was deceased. However she felt that the Board should have replaced the Co-ordinator, rather than sending her access requests to the Board's law firm for reply.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Did the Board "investigate" the complainant when it collected her personal information?
- (C) Was the disclosure by the Board in accordance with section 32 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, sex, sexual orientation or marital or family status of the individual,
- ...
- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual; ("renseignements personnels")

The complainant sent us copies of the two letters that she had received from the law firm, concerning her access requests. These two letters had been addressed to her as "Ms" and contained her first name.

In our view, the information contained in these two letters (her first name and her sex) met the requirements in paragraphs (a) and (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was "personal information" as defined in section 2(1) of the Act.

Issue B: Did the Board "investigate" the complainant when it collected her personal information?

The complainant wrote that she had never referred to herself either by her first name or "Ms" in any correspondence with the Board. As a result, she complained that the Board must have investigated her to determine her first name and her sex. The Board denied conducting any investigation as suggested by the complainant.

The Board replied that the complainant had provided her access requests in two envelopes which were addressed to the Director of Education with the notation "Private and Confidential to be opened only by the Director of Education". Neither envelope contained any indication that they contained access requests. However, inside one of the envelopes was a letter dated August 8, 1993 to the Director of Education referring to access requests. This letter was signed by the complainant and contained the complainant's first name in full. The Board advised us that its lawyer had concluded that the name contained in the letter was that of a woman and had addressed the complainant as "Ms". The Board stated that the use of "Ms" was a social courtesy

which is standard with correspondence.

The Board provided us with a copy of the letter in question. It is our view that the complainant herself disclosed her first name and sex in her letter to the Board.

Conclusion: We found no evidence that the Board had "investigated" the complainant when it collected her personal information.

Issue C: Was the disclosure by the Board in accordance with section 32 of the Act?

Under the Act, personal information in the custody or control of an institution cannot be disclosed except in the specific circumstances outlined in section 32.

The Board stated that it had relied on section 32(c) of the Act for this disclosure. Section 32(c) of the Act states:

An institution shall not disclose personal information in its custody or under its control except,

...

(c) for the purpose for which it was obtained or compiled or for a consistent purpose;

...

The Board advised that, at the time of the complainant's access requests, the original Co-ordinator had recently been deceased. The Board had asked the Board's lawyer (at the law firm) to assist the Board in the interim pending the appointment of a replacement. This lawyer had been continually responsible for providing advice to the Board with respect to matters concerning the Act.

At the time the Board received the complainant's access requests, the lawyer was the acting Co-ordinator. The Board therefore provided the complainant's documents to the lawyer to review, provide advice and assist the Board in responding to her access requests.

The complainant also wrote that her personal information (her name) had been disclosed to a [named] law clerk at the same law firm. In the lawyer's reply to the complainant, he told her that he would be away for a certain period of time. During this time, he advised her that she could correspond with the law clerk.

It is our view that the Board disclosed the complainant's personal information to the lawyer for the same purpose for which it had been collected - namely, to respond to the access requests. The lawyer was the Board's acting Co-ordinator at that time, and thus the Board had to disclose

the complainant's access requests to him so that he could respond to these requests.

It is also our view that the lawyer disclosed the complainant's name to the law clerk for the same purpose for which the personal information had been collected - namely, to respond to the access requests while the lawyer was absent.

Conclusion: The disclosure of the personal information by the Board was in accordance with section 32(c) of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was "personal information", as defined in section 2(1) of the Act.
- We found no evidence that the Board "investigated" her when it collected her personal information.
- The disclosure of the personal information by the Board was in accordance with section 32(c) of the Act.

Original signed by: _____
Susan Anthistle
Compliance Review Officer

December 14, 1993
Date



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INVESTIGATION REPORT

INVESTIGATION I93-043M

A BOARD OF EDUCATION



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a board of education (the Board).

The complainant wrote that she had filed access requests with the Board, pursuant to the provisions of the Municipal Freedom of Information and Protection of Privacy Act (the Act).

She complained that the Board, on receipt of her access requests, had "investigated" her and found out her first name and sex. She complained that the Board had then wrongly disclosed her first name and sex to its law firm. The complainant discovered this disclosure when the law firm wrote her two letters, using her first name and "Ms" which indicated that she was female. The complainant wrote that she had never disclosed her first name or her sex in her access requests.

The Board had previously informed her that its Freedom of Information and Protection of Privacy Co-ordinator (the Co-ordinator) was deceased. However she felt that the Board should have replaced the Co-ordinator, rather than sending her access requests to the Board's law firm for reply.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Did the Board "investigate" the complainant when it collected her personal information?
- (C) Was the disclosure by the Board in accordance with section 32 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

(a) information relating to the race, national or ethnic origin, colour, religion, sex, sexual orientation or marital or family status of the individual,

...

(h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual; ("renseignements personnels")

The complainant sent us copies of the two letters that she had received from the law firm, concerning her access requests. These two letters had been addressed to her as "Ms" and contained her first name.

In our view, the information contained in these two letters (her first name and her sex) met the requirements in paragraphs (a) and (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was "personal information" as defined in section 2(1) of the Act.

Issue B: Did the Board "investigate" the complainant when it collected her personal information?

The complainant wrote that she had never referred to herself either by her first name or "Ms" in any correspondence with the Board. As a result, she complained that the Board must have investigated her to determine her first name and her sex. The Board denied conducting any investigation as suggested by the complainant.

The Board replied that the complainant had provided her access requests in two envelopes which were addressed to the Director of Education with the notation "Private and Confidential to be opened only by the Director of Education". Neither envelope contained any indication that they contained access requests. However, inside one of the envelopes was a letter dated August 8, 1993 to the Director of Education referring to access requests. This letter was signed by the complainant and contained the complainant's first name in full. The Board advised us that its lawyer had concluded that the name contained in the letter was that of a woman and had addressed the complainant as "Ms". The Board stated that the use of "Ms" was a social courtesy

which is standard with correspondence.

The Board provided us with a copy of the letter in question. It is our view that the complainant herself disclosed her first name and sex in her letter to the Board.

Conclusion: We found no evidence that the Board had "investigated" the complainant when it collected her personal information.

Issue C: Was the disclosure by the Board in accordance with section 32 of the Act?

Under the Act, personal information in the custody or control of an institution cannot be disclosed except in the specific circumstances outlined in section 32.

The Board stated that it had relied on section 32(c) of the Act for this disclosure. Section 32(c) of the Act states:

An institution shall not disclose personal information in its custody or under its control except,

...

(c) for the purpose for which it was obtained or compiled or for a consistent purpose;

...

The Board advised that, at the time of the complainant's access requests, the original Co-ordinator had recently been deceased. The Board had asked the Board's lawyer (at the law firm) to assist the Board in the interim pending the appointment of a replacement. This lawyer had been continually responsible for providing advice to the Board with respect to matters concerning the Act.

At the time the Board received the complainant's access requests, the lawyer was the acting Co-ordinator. The Board therefore provided the complainant's documents to the lawyer to review, provide advice and assist the Board in responding to her access requests.

The complainant also wrote that her personal information (her name) had been disclosed to a [named] law clerk at the same law firm. In the lawyer's reply to the complainant, he told her that he would be away for a certain period of time. During this time, he advised her that she could correspond with the law clerk.

It is our view that the Board disclosed the complainant's personal information to the lawyer for the same purpose for which it had been collected - namely, to respond to the access requests. The lawyer was the Board's acting Co-ordinator at that time, and thus the Board had to disclose

the complainant's access requests to him so that he could respond to these requests.

It is also our view that the lawyer disclosed the complainant's name to the law clerk for the same purpose for which the personal information had been collected - namely, to respond to the access requests while the lawyer was absent.

Conclusion: The disclosure of the personal information by the Board was in accordance with section 32(c) of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was "personal information", as defined in section 2(1) of the Act.
- We found no evidence that the Board "investigated" her when it collected her personal information.
- The disclosure of the personal information by the Board was in accordance with section 32(c) of the Act.

Original signed by:
Susan Anthistle
Compliance Review Officer

December 14, 1993
Date

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-I56

INVESTIGATION REPORT

INVESTIGATION I93-043P

MINISTRY OF HEALTH

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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning one of the Ministry of Health's psychiatric hospitals (the Hospital).

For medical reasons, the complainant, an employee of the Hospital, requested employment accommodation under the Employment Equity Program. The accommodation would enable her to continue to work in her capacity at the Hospital. During the course of arranging the complainant's accommodation needs, the complainant's supervisor, the Director of Psychology (the Director), disclosed the complainant's medical diagnosis to certain Hospital staff.

The complainant was concerned about the disclosures of this personal information, stating that they were contrary to the Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Were the Director's disclosures of the complainant's personal information in accordance with section 42 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (h) the individual's name if it appears with other personal information relating to the individual...

The complainant's counsel (the Counsel) provided a number of documents which identified the complainant by name together with information about her medical condition. Two of these documents were memoranda. One, dated November 6, 1991, was written by the Director to the Director, Materials Management, and copied to the Assistant Administrator, Clinical Services

(the Assistant Administrator). The other, dated June 30, 1992, was written by the Director to the complainant and copied to the Assistant Administrator, the Employment Equity Advisor, and the Personnel department.

After reviewing the documents provided, it is our view that they contained information which met the requirements in paragraph (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was personal information as defined in section 2(1) of the Act.

Issue B: Were the Director's disclosures of the complainant's personal information in accordance with section 42 of the Act?

We determined that, of the documents provided by the Counsel, only the two memoranda disclosed the complainant's personal information to Hospital staff.

While the complainant stated that the Director had also disclosed a doctor's note to the Employment Equity Advisor even after "confirming that she [the Director] would not invade my [the complainant's] privacy", the information provided by Counsel did not support that such a disclosure took place. In addition, the Hospital submitted that the Director stated that she did not remember disclosing the doctor's note, and the Employment Equity Advisor did not recall seeing such a doctor's note and did not have a copy of any such note in her files.

Under the Act, personal information in the custody or control of an institution can not be disclosed except in the specific circumstances outlined in section 42.

With respect to the Director's disclosure of the complainant's personal information in the memorandum dated November 6, 1991, to the Director, Materials Management, and the Assistant Administrator, and the disclosure in the memorandum dated June 30, 1992, to the Assistant Administrator, the Employment Equity Advisor, and the Personnel department, the Hospital stated that it had relied on section 42(d) of the Act for both of these disclosures.

Section 42(d) states:

An institution shall not disclose personal information in its custody or under its control except,

- (d) where disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and where disclosure is necessary and proper in the discharge of the institution's functions;

The Hospital submitted that each of the employees to whom the complainant's personal information was disclosed, needed the information in the performance of his or her duties.

Specifically, the Assistant Administrator, as the supervisor of the Director, needed the personal information to support the complainant's request for accommodation. The Employment Equity Advisor, as the Hospital's liaison person with Employment Equity, needed the information in order to advocate for the complainant's need for accommodation and to communicate with the Employment Equity Co-ordinator's Office in the Ministry of Health. The Hospital advised that the Employment Equity Advisor was the same person as the Director, Materials Management.

With respect to the disclosure to staff in the Personnel department, the Hospital stated that its Personnel or Human Resources department had a role in supporting the needs of employees, such as, in this case, employee accommodation. For the purpose of maintaining employee files, Personnel department staff required a copy of the memoranda containing the personal information in question.

The Hospital maintained that, therefore, the Director's disclosures of the complainant's medical diagnosis to the above parties were in accordance with section 42(d) of the Act since they needed the information in order to perform their duties, i.e. to plan the accommodation needs of the complainant.

In our view, providing for the accommodation needs of an employee under the Employment Equity Program was an administrative function of the Hospital. As a part of this function, the Assistant Administrator had the responsibility of ensuring that the complainant's accommodation needs were met and of approving the purchase of necessary equipment. In order to be able to do so, he needed the complainant's medical information. It is, therefore, our view that the disclosures in the two memoranda of the complainant's medical information to the Assistant Administrator, as the Director's supervisor, were to an officer who needed the information in the performance of his duties and the disclosures were necessary and proper in the discharge of one of the Hospital's administrative functions. Therefore, the disclosures to the Assistant Administrator were in accordance with section 42(d) of the Act.

However, it is our view that the disclosure in the November 6, 1991 memorandum to the Director, Materials Management, was not in accordance with section 42(d) of the Act. The memorandum sent to the Director, Materials Management, by the Director was for the purpose of purchasing the necessary accommodation equipment for the complainant. It is our view that the Director, Materials Management, did not need to know any details of the complainant's medical condition in order to purchase equipment which had already been noted in an attached purchase order. In addition, while the Hospital advised that the Director, Materials Management, and the Employment Equity Advisor were the same person, this was not the case in November 1991 when the disclosure occurred. The role of Employment Equity Advisor was a special assignment that was not assumed by the Director, Materials Management, until the spring of 1992.

It is also our view that the disclosure of the complainant's medical diagnosis in the June 30, 1992 memorandum to the Personnel department was not in accordance with section 42(d) of the Act. The Hospital stated that the disclosure was necessary since the Personnel department had a role in supporting the needs of the complainant and in maintaining employee records. In our

view, it was unnecessary for the complainant's specific medical diagnosis to be disclosed to the Personnel department in order for the department to support her accommodation needs or to maintain records. Therefore, in our view, the disclosure to staff in the Personnel department was not a disclosure to an officer or employee who needed the complainant's medical information in the performance of his or her duties and was, therefore, not in accordance with section 42(d) of the Act.

With respect to the disclosure of the June 30, 1992 memorandum to the Director, Materials Management, in her capacity as Employment Equity Advisor, it is our view that the disclosure was also not in accordance with section 42(d) of the Act. At that time, the Employment Equity Advisor was not yet involved in the accommodation process. It was not necessary for her to communicate with the Employment Equity Co-ordinator's Office in the Ministry of Health since she was not at that time, advocating for the complainant's accommodation needs. Therefore, in our view, the disclosure of the complainant's medical diagnosis in the June 30, 1992 memorandum to the Employment Equity Advisor was, at that time, not a disclosure to an officer who need the information in the performance of her duties and therefore, it was not in accordance with section 42(d) of the Act.

In our view, except for the disclosures to the Assistant Administrator, the disclosures of the complainant's medical information were not in accordance with section 42(d) of the Act. In our view, no other provisions of section 42 applied to the disclosures.

Conclusion: The disclosures of the complainant's medical information to the Assistant Administrator, were in accordance with section 42 of the Act.

The disclosures of the complainant's medical information to staff in the Personnel department, to the Director, Materials Management both as the Director, Materials Management and in her capacity as Employment Equity Advisor were not in accordance with section 42 of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was personal information as defined in section 2(1) of the Act.
- The disclosures of the complainant's medical information to the Assistant Administrator, were in accordance with section 42 of the Act.

The disclosures of the complainant's medical information to staff in the personnel department, to the Director, Materials Management both as the Director, Materials Management and in her capacity as Employment Equity Advisor were not in accordance with section 42 of the Act.

RECOMMENDATIONS

We recommend that the Ministry:

1. take steps to ensure that Hospital staff are aware of the limited purposes for which the disclosure of personal information is permitted under the Act.
2. establish a guideline which sets out the steps to be taken by Hospital Staff when processing an application for employee accommodation under the Employment Equity Program. The guideline should clearly set out to whom an applicant's personal medical information may be disclosed.

Within six months of receiving this report, the Ministry should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendations.

Original signed by:
Susan Anthistle
Manager of Compliance

November 23, 1993
Date

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INVESTIGATION REPORT

INVESTIGATION I93-046M

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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a named municipality (the Municipality).

The complainant, an employee of the Municipality, had been in receipt of Workers' Compensation Board (WCB) benefits for a workplace injury suffered in September 1989. In December 1989, while he was off work recuperating from his injury, the complainant was in a car accident. This accident involved coincidentally a Municipality vehicle. The complainant subsequently filed a civil suit against the Municipality for damages. Since the accident involved one of its vehicles bumping the complainant's car, the Municipality contacted the insurance company which acted as its agent in third party claims involving Municipality vehicles.

In a letter dated March 20, 1992 to the Municipality, the insurance company requested the opportunity of reviewing the complainant's personnel file - specifically any Workers' Compensation Board (WCB) claims. The insurance company stated that it was investigating a "bodily injury claim" submitted by the complainant against the Municipality. The insurance company was concerned that the complainant's claim for injuries might involve any prior and similar WCB injuries.

In a letter dated April 23, 1992 to the insurance company, the Municipality provided the insurance company with documentation which it considered relevant to the complainant's September 1989 WCB claim.

After the insurance company had asked the Municipality for a copy of the complainant's WCB claim but before the Municipality responded, the insurance company received a copy of the complainant's WCB file from the complainant's lawyer on April 7, 1992. The insurance company did not advise the Municipality that it had already received this copy of the complainant's WCB records.

The complainant contended that the Municipality's disclosure of his WCB records to the insurance company was contrary to the Municipal Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,

- (B) Did the Municipality disclose the complainant's personal information, in accordance with section 32 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information", in part, as:

recorded information about an identifiable individual, including,

...

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, fingerprints or blood type of the individual,

...

(h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual; ("renseignements personnels")

We obtained a copy of the documentation which the Municipality had disclosed to the insurance company. This documentation consisted of records pertaining to the complainant's WCB claim dated September 10, 1989. These records contained, for example, information concerning the complainant's medical condition, his WCB claim number, his Social Insurance Number, his driver's licence number, his postal address, and information concerning a WCB overpayment.

The documentation also included a record entitled "SKILLS INVENTORY" which outlined the following information concerning the complainant and eight other Municipality employees: various subjects that the employees had been trained in on a particular date, the fact that all of the employees had successfully completed the training, the dates that the employees were returning to "Operations", and whether they were returning on days or nights.

It is our view that the information contained in the documentation forwarded to the insurance company met the requirements of paragraphs (c), (d) and (h) of the definition of "personal information", in section 2(1) of the Act.

Conclusion: The information in question was "personal information", as defined in section 2(1) of the Act.

Issue B: Did the Municipality disclose the complainant's personal information, in accordance with section 32 of the Act?

Initially, the Municipality stated that it had disclosed the complainant's WCB claim to the insurance company in accordance with section 32(c) of the Act. However, the Municipality subsequently stated that the personal information was **not** disclosed. It stated, instead, that the personal information was **used** for a "purpose reasonably compatible with the purpose for which it was obtained or compiled, in accordance with s.31(b) of the Act".

Section 31 of the Act outlines the general rules for the use of personal information in the custody or control of an institution. In the circumstances of this case, it is our view that since the records containing the personal information in question were forwarded to an organization external to the institution, the **disclosure** provisions of the Act, instead of the use provisions, more appropriately apply.

Section 32 of the Act prohibits the disclosure of personal information by an institution, except in certain circumstances. Section 32(c) of the Act, which the Municipality had originally relied upon, states:

An institution shall not disclose personal information in its custody or under its control except,

(c) for the purpose for which it was obtained or compiled or for a consistent purpose;

In our view, one of the purposes for which the Municipality obtained the complainant's WCB claim was for WCB claims management. However, the Municipality disclosed the complainant's WCB information to the insurance company not for this purpose, but to assist the insurance company with its investigation in respect of the complainant's suit for damages against the Municipality. It is, thus, our view that the Municipality's disclosure of the complainant's personal information to the insurance company was not "for the purpose for which it was obtained or compiled", in accordance with section 32(c) of the Act.

Section 32(c) also states that personal information may be disclosed for a "consistent purpose". However, section 33 of the Act further provides that:

The purpose of a use or disclosure of personal information that has been collected **directly** from the individual to whom the information relates is a consistent purpose under clauses 31(b) and 32(c) only if the individual might reasonably have expected such a use or disclosure. (emphasis added)

In this case, however, the personal information was not collected directly from the complainant. When personal information has been collected indirectly, as in the circumstances of this case, a consistent purpose is one which is "reasonably compatible" with the purpose for which the personal information has been obtained or compiled.

As we stated earlier, one of the purposes for which the complainant's WCB claim had been obtained by the Municipality was for WCB claims management. In our view, the Municipality's disclosure of the complainant's WCB claim to the insurance company for the purpose of addressing the civil suit was not reasonably compatible with WCB claims management. It is thus our view that the Municipality's disclosure was not for a "consistent purpose", in accordance with section 32(c) of the Act.

It is also our view that if the Municipality had not been coincidentally the complainant's employer, the Municipality would not have had custody or control of the complainant's WCB records and would not have been in a position to disclose these records. We acknowledge that in order for the civil suit to proceed, it would have been necessary eventually for the complainant or his representative to disclose these records to the insurance company. However, it is our view that it would not have been necessary for the complainant's employer to be involved.

We have reviewed the remaining exceptions under section 32 and found that none applied to the circumstances of this case. It is, therefore, our view that the Municipality disclosed the complainant's personal information to the insurance company contrary to section 32 of the Act.

Conclusion: The Municipality disclosed the complainant's personal information contrary to section 32 of the Act.

Other Matters

During the course of this investigation, the following matters were identified which should be brought to the institution's attention.

Disclosure of the "SKILLS INVENTORY"

We found that in addition to sending a copy of the complainant's WCB records, the Municipality also disclosed a record entitled "SKILLS INVENTORY", to the insurance company. As previously mentioned, this record included details about training which the complainant and other Municipality employees had successfully completed. It also included details regarding the dates that the employees were returning to "Operations", and whether they were returning on days or nights.

We examined section 32 of the Act and found that none of the exceptions listed applied to this disclosure. Accordingly, it is our view that the Municipality's disclosure of this personal information was contrary to section 32 of the Act.

Conclusion: The Municipality disclosed the personal information contained in the "SKILLS INVENTORY" contrary to section 32 of the Act.

Faxing of Personal Information

While this complaint did not concern the improper disclosure of personal information by facsimile, we noticed that there was a facsimile cover sheet included in the records disclosed to the insurance company. Since it appeared that personal information might have been sent via facsimile, we reminded the Municipality of our faxing guidelines. We enclosed (with our draft report) copies of the following: "Guidelines on Facsimile Transmission Security, June 1989" and "Update on 1989 Guidelines on Facsimile Transmission Security, June 1990".

SUMMARY OF CONCLUSIONS

- The information in question was "personal information", as defined in section 2(1) of the Act.
- The Municipality disclosed the complainant's personal information contrary to section 32 of the Act.
- The Municipality disclosed the personal information contained in the "SKILLS INVENTORY" contrary to section 32 of the Act.

RECOMMENDATIONS

We recommend that the Municipality:

1. take steps to ensure that disclosures of personal information are made in accordance with the Act, for example, by clarifying any existing guidelines or procedures regarding disclosure of personal information;
2. remind its employees of our guidelines on the transmission of facsimiles.

Within six months of receiving this report, the Board should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendations.

Original signed by: _____
Susan Anthistle
Compliance Review Officer

December 31, 1993
Date



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INVESTIGATION REPORT

INVESTIGATION I93-046M

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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a named municipality (the Municipality).

The complainant, an employee of the Municipality, had been in receipt of Workers' Compensation Board (WCB) benefits for a workplace injury suffered in September 1989. In December 1989, while he was off work recuperating from his injury, the complainant was in a car accident. This accident involved coincidentally a Municipality vehicle. The complainant subsequently filed a civil suit against the Municipality for damages. Since the accident involved one of its vehicles bumping the complainant's car, the Municipality contacted the insurance company which acted as its agent in third party claims involving Municipality vehicles.

In a letter dated March 20, 1992 to the Municipality, the insurance company requested the opportunity of reviewing the complainant's personnel file - specifically any Workers' Compensation Board (WCB) claims. The insurance company stated that it was investigating a "bodily injury claim" submitted by the complainant against the Municipality. The insurance company was concerned that the complainant's claim for injuries might involve any prior and similar WCB injuries.

In a letter dated April 23, 1992 to the insurance company, the Municipality provided the insurance company with documentation which it considered relevant to the complainant's September 1989 WCB claim.

After the insurance company had asked the Municipality for a copy of the complainant's WCB claim but before the Municipality responded, the insurance company received a copy of the complainant's WCB file from the complainant's lawyer on April 7, 1992. The insurance company did not advise the Municipality that it had already received this copy of the complainant's WCB records.

The complainant contended that the Municipality's disclosure of his WCB records to the insurance company was contrary to the Municipal Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,

- (B) Did the Municipality disclose the complainant's personal information, in accordance with section 32 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information", in part, as:

recorded information about an identifiable individual, including,

...

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, fingerprints or blood type of the individual,

...

(h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual; ("renseignements personnels")

We obtained a copy of the documentation which the Municipality had disclosed to the insurance company. This documentation consisted of records pertaining to the complainant's WCB claim dated September 10, 1989. These records contained, for example, information concerning the complainant's medical condition, his WCB claim number, his Social Insurance Number, his driver's licence number, his postal address, and information concerning a WCB overpayment.

The documentation also included a record entitled "SKILLS INVENTORY" which outlined the following information concerning the complainant and eight other Municipality employees: various subjects that the employees had been trained in on a particular date, the fact that all of the employees had successfully completed the training, the dates that the employees were returning to "Operations", and whether they were returning on days or nights.

It is our view that the information contained in the documentation forwarded to the insurance company met the requirements of paragraphs (c), (d) and (h) of the definition of "personal information", in section 2(1) of the Act.

Conclusion: The information in question was "personal information", as defined in section 2(1) of the Act.

Issue B: Did the Municipality disclose the complainant's personal information, in accordance with section 32 of the Act?

Initially, the Municipality stated that it had disclosed the complainant's WCB claim to the insurance company in accordance with section 32(c) of the Act. However, the Municipality subsequently stated that the personal information was **not** disclosed. It stated, instead, that the personal information was **used** for a "purpose reasonably compatible with the purpose for which it was obtained or compiled, in accordance with s.31(b) of the Act".

Section 31 of the Act outlines the general rules for the **use** of personal information in the custody or control of an institution. In the circumstances of this case, it is our view that since the records containing the personal information in question were forwarded to an organization external to the institution, the **disclosure** provisions of the Act, instead of the use provisions, more appropriately apply.

Section 32 of the Act prohibits the disclosure of personal information by an institution, except in certain circumstances. Section 32(c) of the Act, which the Municipality had originally relied upon, states:

An institution shall not disclose personal information in its custody or under its control except,

(c) for the purpose for which it was obtained or compiled or for a consistent purpose;

In our view, one of the purposes for which the Municipality obtained the complainant's WCB claim was for WCB claims management. However, the Municipality disclosed the complainant's WCB information to the insurance company not for this purpose, but to assist the insurance company with its investigation in respect of the complainant's suit for damages against the Municipality. It is, thus, our view that the Municipality's disclosure of the complainant's personal information to the insurance company was not "for the purpose for which it was obtained or compiled", in accordance with section 32(c) of the Act.

Section 32(c) also states that personal information may be disclosed for a "consistent purpose". However, section 33 of the Act further provides that:

The purpose of a use or disclosure of personal information that has been collected **directly** from the individual to whom the information relates is a consistent purpose under clauses 31(b) and 32(c) only if the individual might reasonably have expected such a use or disclosure. (emphasis added)

In this case, however, the personal information was not collected directly from the complainant. When personal information has been collected indirectly, as in the circumstances of this case, a consistent purpose is one which is "reasonably compatible" with the purpose for which the personal information has been obtained or compiled.

As we stated earlier, one of the purposes for which the complainant's WCB claim had been obtained by the Municipality was for WCB claims management. In our view, the Municipality's disclosure of the complainant's WCB claim to the insurance company for the purpose of addressing the civil suit was not reasonably compatible with WCB claims management. It is thus our view that the Municipality's disclosure was not for a "consistent purpose", in accordance with section 32(c) of the Act.

It is also our view that if the Municipality had not been coincidentally the complainant's employer, the Municipality would not have had custody or control of the complainant's WCB records and would not have been in a position to disclose these records. We acknowledge that in order for the civil suit to proceed, it would have been necessary eventually for the complainant or his representative to disclose these records to the insurance company. However, it is our view that it would not have been necessary for the complainant's employer to be involved.

We have reviewed the remaining exceptions under section 32 and found that none applied to the circumstances of this case. It is, therefore, our view that the Municipality disclosed the complainant's personal information to the insurance company contrary to section 32 of the Act.

Conclusion: The Municipality disclosed the complainant's personal information contrary to section 32 of the Act.

Other Matters

During the course of this investigation, the following matters were identified which should be brought to the institution's attention.

Disclosure of the "SKILLS INVENTORY"

We found that in addition to sending a copy of the complainant's WCB records, the Municipality also disclosed a record entitled "SKILLS INVENTORY", to the insurance company. As previously mentioned, this record included details about training which the complainant and other Municipality employees had successfully completed. It also included details regarding the dates that the employees were returning to "Operations", and whether they were returning on days or nights.

We examined section 32 of the Act and found that none of the exceptions listed applied to this disclosure. Accordingly, it is our view that the Municipality's disclosure of this personal information was contrary to section 32 of the Act.

Conclusion: The Municipality disclosed the personal information contained in the "SKILLS INVENTORY" contrary to section 32 of the Act.

Faxing of Personal Information

While this complaint did not concern the improper disclosure of personal information by facsimile, we noticed that there was a facsimile cover sheet included in the records disclosed to the insurance company. Since it appeared that personal information might have been sent via facsimile, we reminded the Municipality of our faxing guidelines. We enclosed (with our draft report) copies of the following: "Guidelines on Facsimile Transmission Security, June 1989" and "Update on 1989 Guidelines on Facsimile Transmission Security, June 1990".

SUMMARY OF CONCLUSIONS

- The information in question was "personal information", as defined in section 2(1) of the Act.
- The Municipality disclosed the complainant's personal information contrary to section 32 of the Act.
- The Municipality disclosed the personal information contained in the "SKILLS INVENTORY" contrary to section 32 of the Act.

RECOMMENDATIONS

We recommend that the Municipality:

1. take steps to ensure that disclosures of personal information are made in accordance with the Act, for example, by clarifying any existing guidelines or procedures regarding disclosure of personal information;
2. remind its employees of our guidelines on the transmission of facsimiles.

Within six months of receiving this report, the Board should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendations.

Original signed by: _____
Susan Anthistle
Compliance Review Officer

December 31, 1993
Date



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

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INVESTIGATION REPORT

INVESTIGATION I93-046P

MINISTRY OF HEALTH



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a psychiatric hospital of the Ministry of Health (the Ministry).

A hospital employee was concerned that the hospital was storing employee related injured worker information with regular patient information on a computer system that was accessible by other employees who did not need access to this information. He was also concerned that pay stubs were being distributed in an unsecured manner, and that employee time sheet printouts showing employees' Social Insurance Numbers (SINs) were being sent to departments in an unsecured manner.

The complainant believed that these practices were in contravention of the Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Was the disclosure of the "personal information" in accordance with section 42 of the Act?
- (C) Were reasonable measures in place to prevent unauthorized access to "personal information" in accordance with Regulation 460 under the Act, as amended by Regulation 532/93?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

...

- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

We have determined that injured worker information was comprised of the injured worker's name, the type of injury, the amount of time away from work and whether a Workers' Compensation Board (WCB) claim had been made. Pay stubs and time sheets contained the employee's name and SIN. Pay stubs also contained salary details.

We are of the view that this information met the requirements in paragraphs (b) and (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was "personal information" as defined in section 2(1) of the Act.

Issue B: Was the disclosure of the "personal information" in accordance with section 42 of the Act?

Under the Act, personal information in the custody or under the control of an institution can not be disclosed except in the specific circumstances outlined in section 42.

Pay Cheques/Pay Stubs

The Ministry stated that it had relied on section 42(d) of the Act for the disclosure of personal information contained in the pay cheques/pay stubs. Section 42(d) states:

An institution shall not disclose personal information in its custody or under its control except,

- (d) where disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and where disclosure is necessary and proper in the discharge of the institution's functions;

The complainant was concerned that pay stubs were not distributed in sealed envelopes.

In our draft report, we stated that under the Ministry's "Payroll Procedures", pay cheques/pay stubs were being distributed to staff through supervisors or delegates. Staff not on duty on pay day could pick up their cheques at the Business Office. The Ministry stated that only 4 out of 750 staff had requested that their pay stubs be placed in a sealed envelope.

While we accepted that it was a duty of supervisors or delegates to distribute pay cheques/pay stubs to employees, it was our view that they needed to know only the names of the employees in order to perform this duty. The disclosure of any other personal information about employees to supervisors or delegates in the distribution of pay cheques/pay stubs was not in accordance with section 42(d) of the Act.

We also examined the other provisions of section 42 of the Act and determined that none were applicable in the circumstances of this case.

Conclusion: The disclosure of personal information other than the names of employees to supervisors or delegates who distributed employees' pay cheques/pay stubs was not in accordance with section 42 of the Act.

In its submissions to our draft report, the Ministry advised that in October 1993, new payroll procedures were initiated that provided for greater protection of personal information. The new payroll procedures required all staff to pick up their own pay cheque/pay stub personally from the Business Office. It was the Ministry's view that the new procedures eliminated the need to seal pay cheques/pay stubs in envelopes.

Computer Printouts of Time Sheets

The Ministry stated that it was its view that disclosure of employees' SINs on computer printouts to certain staff was in accordance with both sections 42(c) and 42(d) of the Act.

As previously indicated, section 42(d) permits the disclosure of personal information where the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and where disclosure is necessary and proper in the discharge of the institution's functions.

The Ministry stated that SINs were needed to key data into the computer for payroll entry. The Payroll Department sent computer printouts of time sheets, which included employees' SINs,

to Head Nurses, Supervisors, Department Heads and other managers for their input of the number of hours their assigned staff had worked. The completed time sheets were then returned to the Payroll department for processing. The Payroll department needed the SINs as the SIN was used as a unique employee identifier for entering data into the government payroll system. The Payroll Department had no way of keying in employees' worked time data into the payroll system without this unique identifier. It was the Ministry's view that if SINs were not included on the timesheet printouts before they were sent to staff of other departments, the payroll staff would not be able to enter the time worked information into the computer, when the time sheets were returned to them.

It is our view that the administration of employees' pay, specifically data entry of salary information is a function of the Ministry and that the disclosure of employees' SINs was necessary to the payroll staff in order for them to be able to key into the government payroll system. Therefore, the disclosure of the employees' SINs to the Payroll Department staff was in accordance with section 42(d) of the Act. However, it is our view that the disclosure of the SINs to staff of other departments, i.e. Head Nurses, Supervisors, Department Heads and other Managers was not necessary for them to be able to complete employees' time sheets. Therefore, the disclosure of employees' SINs to the staff in other departments was not in accordance with section 42(d) of the Act.

We also examined the application of section 42(c) of the Act to the disclosure of employees' SINs. This section states:

An institution shall not disclose personal information in its custody or under its control except,

- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;

The employees' SINs were collected as a unique identifier by the Payroll Department staff so that they could enter employees' time worked data into the government payroll system. In our view, the disclosure to staff in other departments of employees' SINs on computer printouts of time sheets sent to them, could not be said to be for this same purpose or for a consistent purpose. The disclosure to them was, therefore, not in accordance with section 42(c) of the Act.

We have examined the other provisions of section 42 and have determined that none were applicable to the disclosure of employees' SINs to staff who were not in the Payroll Department.

Conclusions: The disclosure of employees' SINs on computer printouts of time sheets to staff in the Payroll Department was in accordance with section 42 of the Act.

The disclosure of employees' SINs on computer printouts of time sheets

to staff in other departments was not in accordance with section 42 of the Act.

Issue C: Were reasonable measures in place to prevent unauthorized access to "personal information" in accordance with Regulation 460 under the Act, as amended by Regulation 532/93?

Section 4(1) of Regulation 460 under the Act, as amended by Regulation 532/93 states:

Every head shall ensure that reasonable measures to prevent unauthorized access to the records in his or her institution are defined, documented and put in place, taking into account the nature of the records to be protected.

Computer Printouts of Time Sheets

The complainant was concerned that computer printouts of time sheets showing employees' SINs were being sent to departments in an unsecured manner. He stated that time sheets were left open on the responsible individuals' desks and could be read by anyone.

The Ministry stated that computer printouts of time sheets from the Payroll Department were distributed to and returned from other departments in sealed envelopes. The Ministry further stated that according to its procedures, individuals responsible for completing the information on time sheets should not have had time sheets open on their desks in a way which allowed others to read them. However, the Ministry acknowledged that there may have been isolated incidents where there may have been non-compliance with these procedures.

It is our view that there were reasonable measures documented and defined for the protection of personal information contained in computer printouts of time sheets when they were distributed to departments heads; when they were in the possession of department heads; and when they were returned to the Payroll Department. However, individual staff may not have been following the appropriate security procedures at all times.

Conclusion: Reasonable measures to protect computer printouts of time sheets in the departments were defined, documented and in place, in accordance with section 4(1) of Regulation 460 under the Act, as amended by Regulation 532/93.

Employee related information

The complainant was concerned that the Ministry was storing employee related injured worker information with regular patient information on a computer system that was accessible by other employees, who did not need this information.

The complainant also stated that another employee had sought counselling and assistance from doctors at the hospital and that this employee's personal information had then been stored in the regular patient computer system and was, thus, accessible by other employees who did not need access to employee-related information. The complainant, however, was unable to provide any documentation to support his contention about this incident.

The Ministry stated that the computer used to track employee incidents including WCB claims, was a stand alone personal computer that was located in the office of the Co-ordinator of Occupational Health and Safety, and was distinct from the hospital's computer system that contained regular patient information. This personal computer was not networked with any other computer system in the hospital. Further, the software in use had a password to prevent unauthorized personnel from accessing the information stored on the computer.

The Ministry indicated that only the Co-ordinator of Occupational Health and Safety, who was responsible for workers' compensation claims management, had access to the information on the computer. Any requests for information had to be first approved by the employee and then the administration of the hospital before it could be released.

The Ministry stated that it was aware of the incident described by the complainant but that it had subsequently taken certain corrective measures. The new procedures were as follows.

Employees who obtained professional help from the hospital were treated as regular patients but, their medical case book and all related documents were kept in locked cabinets under the custody and control of the Director of Clinical Records Services. The computerised medical records of these employees were continued to be kept in the hospital's regular patient computer system. However, in the computerized records, the employee's name was changed to an alias, and other identifying information such as address, next of kin, SIN and Health Card Number was recorded as "unknown". The key to the alias name in the computer was kept in the log in the confidential drawer by the Director of Clinical Records Services.

The Ministry stated that these procedures were documented in the Clinical Records Departmental manual.

Based on the above information, it is our view that reasonable measures were defined, documented and in place to prevent unauthorized access to the personal information of employees with respect to employee incidents including injured worker information. Similarly, measures were in place with respect to personal information, relating to those employees who had obtained professional help, which was stored in the hospital's regular patient computer system.

Conclusion: Reasonable measures were defined, documented and in place to prevent unauthorized access to employee-related personal information stored in the hospital's computer systems in accordance with section 4(1) of Regulation 460 under the Act, as amended by Regulation 532/93.

SUMMARY OF CONCLUSIONS

- The information in question was "personal information" as defined in section 2(1) of the Act.
- The disclosure of personal information other than the names of employees to supervisors or delegates who distributed employees' pay cheques/pay stubs was not in accordance with section 42 of the Act.
- The disclosure of employees' SINs on computer printouts of time sheets to staff in the Payroll Department was in accordance with section 42 of the Act.
- The disclosure of employees' SINs on computer printouts of time sheets to staff in other departments was not in accordance with section 42 of the Act.
- Reasonable measures to protect computer printouts of time sheets in the departments were defined, documented and in place, in accordance with section 4(1) of Regulation 460 under the Act, as amended by Regulation 532/93.
- Reasonable measures were defined, documented and in place, to prevent unauthorized access to employee-related personal information stored in the hospital's computer systems in accordance with section 4(1) of Regulation 460 under the Act, as amended by Regulation 532/93.

RECOMMENDATIONS

We acknowledge that the Ministry has amended its payroll procedures effective October 1993. All staff are now required to pick up their own pay cheques/pay stubs personally from the Business Office. It is the Ministry's view that this procedure has eliminated the need to seal pay cheques/pay stubs in sealed envelopes. We concur with this view.

We, therefore, recommend that the Ministry:

1. find an alternative method for collecting employees' time worked information that would

not involve the disclosure of employees' SINs to staff of departments other than the Payroll Department.

2. remind staff of their obligation to follow Ministry procedures at all times with respect to the security of personal information contained in computer printouts of time sheets.

Within six months of receiving this report, the Ministry should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendations.

Original signed by: _____

Susan Anthistle
Compliance Review Officer

December 8, 1993 _____

Date



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INVESTIGATION REPORT

INVESTIGATION I93-047P

MINISTRY OF THE SOLICITOR GENERAL AND CORRECTIONAL SERVICES



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of the Solicitor General and Correctional Services (the Ministry).

Specifically, the complainant was concerned about attendance review letters regarding sick time that had been sent to bargaining unit staff at one of the Ministry's correctional facilities. These letters were part of the process of the reviewing, monitoring and controlling of the attendance of all employees within the facility. Employees whose rate of absenteeism was becoming unacceptable were the subject of these letters.

The complainant was concerned, however, that the Ministry had not at any time notified the individuals involved, including himself, that the personal information contained in these attendance review letters had been collected. He was also concerned that the attendance review letters had subsequently been summarized in a list which was then posted on a notice board.

The complainant believed that these actions were in contravention of the Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Was notice of the collection of the personal information contained in the attendance letters given in accordance with section 39(2) of the Act?
- (C) Was the personal information in the summary list disclosed in accordance with section 42 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable

individual, including,

.....

- (h) the individual's name if it appears with other personal information relating to the individual...

Attendance review letters and the summary list contained names of individuals together with information about their absences due to sickness. It is our view that this information satisfied paragraph (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was "personal information" as defined in section 2(1) of the Act.

Issue B: Was notice of the collection of personal information contained in attendance review letters given in accordance with section 39(2) of the Act?

Section 39(2) of the Act states:

Where personal information is collected on behalf of an institution, the head shall, unless notice is waived by the responsible minister, inform the individual to whom the information relates of,

- (a) the legal authority for the collection;
- (b) the principal purpose or purposes for which the personal information is intended to be used; and
- (c) the title, business address and business telephone number of a public official who can answer the individual's questions about the collection.

The Ministry acknowledged that notice of the collection of attendance information which was later included in the attendance letters was not given to staff who were hired before the Act was in effect. This included the complainant.

However, in response to our draft report, the Ministry submitted that in its view, sufficient notice was given to the complainant, since information about the collection appears in the 1993 - 1994 Directory of Records. This publication contains a list of particular records held by each institution under the Act in addition to the list of common records found in most institutions.

The Ministry stated that the Directory of Records contains a discussion of the "General Attendance Recording System(CARS)". This discussion includes "the location, legal authority, type of information collected, the principle uses and the user (who would be the contact person) as well as the telephone number and address of the Freedom of Information Co-ordinator."

The Ministry submitted that the intent of the Directory of Records is to give notice to the public, as well as employees, of the type of information collected and maintained by an institution. It stated that since the Directory is a public record and is available in the Ministry's correctional facility, this forms due and sufficient notice of its collection of attendance information to employees and meets the requirements of section 39(2) of the Act.

Section 39(2) states in part that "[w]here personal information is collected on behalf of an institution, the head shall, unless notice is waived by the responsible minister, **inform the individual.....**" (emphasis added).

It is our view that including the information in the Directory of Records is not sufficient notice of the Ministry's collection. Such an approach would require that individuals regularly check the Directory of Records to determine what information is being collected rather than being informed of the collection by the Ministry. This approach is not consistent with the purposes of section 39(2) which is intended to make individuals aware of information which is being collected and the purpose(s) for the collection. It is our view, therefore, that the Ministry did not give notice of its collection of personal information to employees hired before the implementation of the Act.

Conclusion: Notice of the collection of personal information contained in the attendance letters was not given in accordance with section 39(2) of the Act to employees who had been hired prior to the implementation of the Act.

Issue C: Was the personal information in the summary list disclosed in accordance with section 42 of the Act?

Under the Act, personal information in the custody or control of an institution may be disclosed only in the specific circumstances outlined in section 42.

In this case, the Assistant Superintendent of the facility had prepared a list of employees who were establishing a pattern of unacceptable attendance. This list was fastened to a clip board and given to the Unit Supervisor for his information and reference in the event that the listed employees failed to report for duty as assigned.

The Ministry acknowledged that the list was then inappropriately placed in a rather public area where several employees had access to the information.

We have examined the provisions of section 42 of the Act and have found that none were applicable to this disclosure of the personal information in the summary list.

We note, however, that upon receipt of a verbal complaint from the complainant, the Assistant Superintendent ordered the list removed and placed in a confidential envelope for the restricted use of the Supervisor. The Assistant Superintendent also apologized verbally to the complainant.

Conclusion: The disclosure of personal information in the summary list was not in accordance with section 42 of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was "personal information" as defined in section 2(1) of the Act.
- Notice of the collection of personal information contained in the attendance letters was not given in accordance with section 39(2) of the Act to employees who had been hired prior to the implementation of the Act.
- The disclosure of personal information in the summary list was not in accordance with the Act.

RECOMMENDATIONS

We recommend that:

- (1) the Ministry provide notice of the collection of attendance information also to those employees hired before the implementation of the Act in accordance with section 39(2) of the Act.
- (2) the Ministry include information about the requirements of the Act for the disclosure of personal information in any policy or guidelines on the reviewing, monitoring and controlling of employees' attendance.

Within six months of receiving this report, the Ministry should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendations.

Original signed by: _____
Susan Anthistle
Compliance Review Officer

October 27, 1993
Date



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

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INVESTIGATION REPORT

INVESTIGATION I93-048P

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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Workers' Compensation Board (the Board).

The complainant stated that the Board had collected and disclosed information concerning her sexual life to her employer, in contravention of the Freedom of Information and Protection of Privacy Act (the Act).

The information was contained in a psychiatrist's Non Economic Loss Assessment and cover letter to the Board (the NEL), relating to the complainant's claim for Chronic Pain Disability. The NEL contained information concerning the complainant's medical condition and her sexual life with her spouse.

The complainant advised she was employed by a small company, situated in the same small town in which she resided. Based on comments she and other family members had received, the complainant believed her employer had disclosed details in the NEL to residents of the town.

The Workers' Compensation Act has established a two-track benefit system for workers who suffer permanent consequences because of their workplace injuries. It provides compensation for the permanent impairment (the non-economic loss award for the loss of enjoyment of everyday life) and the future loss of earnings (the economic loss award for the employment impact) which result from the injury.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information contained in the NEL "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Did the Board have the authority to collect the personal information, in accordance with section 38(2) of the Act?
- (C) Was the personal information disclosed in accordance with section 42 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information contained in the NEL "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information", in part, as:

recorded information about an identifiable individual, including,

- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

We reviewed a copy of the NEL. It contained the complainant's name together with information about the complainant's medical condition and her sexual life with her spouse.

It is our view that the information contained in the NEL met the requirements of paragraph (h) of the definition of "personal information" in section 2(1) of the Act.

Conclusion: The information contained in the NEL was personal information as defined in section 2(1) of the Act.

Issue B: Did the Board have the authority to collect the personal information, in accordance with section 38(2) of the Act?

Section 38(2) of the Act states:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or **necessary to the proper administration of a lawfully authorized activity**. (emphasis added)

The Board stated that to properly make a NEL assessment, and to fairly determine the amount of compensation due to the complainant, collection of the information concerning sexual life was necessary to the proper administration of a lawfully authorized activity.

The Board referred us to section 42 of the Workers' Compensation Act (the WCA), which addresses NEL assessments. Sections 42(1) and (5), in particular, state:

- (1) A worker who suffers permanent impairment as a result of an injury is entitled to receive compensation for non-economic loss in addition to any other

benefit receivable under this Act.

(5) The Board shall determine in accordance with the prescribed rating schedule and having regard to medical assessments conducted under this section the degree of a worker's permanent impairment expressed as a percentage of total permanent impairment.

Based on the above provisions of the WCA, it is our view that conducting a NEL medical assessment to determine the compensation due to a worker who has suffered permanent impairment as a result of an injury, is a lawfully authorized activity.

With regard to whether the collection of information concerning a worker's sexual life is "necessary" to conducting NEL assessments, the Board advised us of the following.

The Board stated that when considering the amount of compensation for a NEL award, it is important that a psychiatrist fully assess four areas of functioning, in determining the severity of impairment for the purposes of determining an award in cases of Chronic Pain Disability.

The Board has adopted the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment. These areas are:

- 1) Activities of Daily Living
- 2) Social Functioning
- 3) Concentration, persistence and pace
- 4) Ability to adapt to stress circumstances.

The Board explained that the more comprehensive the examination of these areas, the more accurate the evaluation of the extent of the impairment. Under Activities of Daily Living, the AMA Guides specify this to include activities such as "self care and personal hygiene, communication, ambulation, attaining all normal living posture, travel, non specialized hand activities, **sexual function**, social and recreational activities". The Guides also state that "what is assessed is not simply the number of activities that are restricted but the overall degree of restrictions or combination of restrictions". It is in this context that questions are asked by the physician about a worker's sexual life. It is an aspect of functioning that can be impaired by a worker's injury. If it is impaired, then the worker's award should reflect that impairment in the context of his/her functioning in this and all the other areas examined.

The Board stressed that it is important to understand that this is an extensive evaluation of the impact of the worker's pain on his or her everyday life, and not just his/her work. This allows for compensation for changes from pre-accident levels of functioning. While sexual function may be a more sensitive area that is being assessed, it is no less important than the many other areas being examined to arrive at an award. In short, questions of a sexual nature are necessary

to conduct a thorough assessment.

Based on the above, it is our view that the Board had the authority to collect the information concerning the complainant's sexual life, as it was necessary to the proper administration of a lawfully authorized activity, that being, the conduct of a NEL medical assessment to determine appropriate compensation. Thus, the Board collected the complainant's personal information in accordance with section 38(2) of the Act.

Conclusion: The Board had the authority to collect the information, in accordance with section 38(2) of the Act.

Issue C: Was the personal information disclosed in accordance with section 42 of the Act?

The complaint concerns disclosure to the complainant's employer. Under the Act, personal information in the custody or control of an institution cannot be disclosed except in the specific circumstances outlined in section 42.

Section 42(e) of the Act states:

An institution shall not disclose personal information in its custody or under its control except,

- (e) for the **purpose of complying with an Act of the Legislature** or an Act of Parliament or a treaty, agreement or arrangement thereunder; (emphasis added)

The Board cited section 42(12) of the WCA as its legislative authority for the disclosure, in accordance with section 42(e) of the Act.

Section 42(12) of the WCA requires the Board to send a copy of the NEL to the accident employer. It states:

(12) The Board shall send a copy of the medical assessment conducted under subsection (9) to the worker and to the employer who employed the worker on the date of the injury.

In our view, the Board's disclosure of the complainant's personal information to the employer was in accordance with section 42(e) of the Act, for the purpose of complying with an Act of the Legislature.

Conclusion: The Board's disclosure of the NEL to the employer was in accordance with section 42 of the Act.

Other Matters

During the course of this investigation, the following matter was identified which should be brought to the Board's attention.

Mailing Procedures for NELs

We asked the Board about the manner in which NELs are sent to employers. We were advised that employers' mailing addresses are identified on the computer system. If an employer has designated a named individual for its correspondence on a claim, the Adjudicator will update the system to state attention to this individual and the NEL would be sent, addressed accordingly. Accompanying the NEL is a cover letter reminding the employer of its obligation under the WCA to not disclose the information. Confidential envelopes are not used.

We are concerned that the Board does not use confidential envelopes when mailing NELs to employers, and that where an appropriate official has not been identified, sensitive medical information may be viewed unnecessarily by the employer's staff, eg. individuals responsible for opening and delivering the employer's mail.

SUMMARY OF CONCLUSIONS

- The information contained in the NEL was personal information as defined in section 2(1) of the Act.
- The Board had the authority to collect the personal information, in accordance with section 38(2) of the Act.
- The Board's disclosure of the NEL to the employer was in accordance with section 42 of the Act.

RECOMMENDATION

We recommend that the Board use confidential envelopes when mailing out medical information to employers. The envelopes should be addressed to a named officer, where this individual has been identified by the employer. If an officer has not been designated, a generic title should be used, for example, "WCB Claims Administrator".

Within six months of receiving this report, the Board should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation.

Original signed by:
Susan Anthistle
Compliance Review Officer

November 26, 1993
Date

Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

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INVESTIGATION REPORT

INVESTIGATION I93-048P

WORKERS' COMPENSATION BOARD

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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Workers' Compensation Board (the Board).

The complainant stated that the Board had collected and disclosed information concerning her sexual life to her employer, in contravention of the Freedom of Information and Protection of Privacy Act (the Act).

The information was contained in a psychiatrist's Non Economic Loss Assessment and cover letter to the Board (the NEL), relating to the complainant's claim for Chronic Pain Disability. The NEL contained information concerning the complainant's medical condition and her sexual life with her spouse.

The complainant advised she was employed by a small company, situated in the same small town in which she resided. Based on comments she and other family members had received, the complainant believed her employer had disclosed details in the NEL to residents of the town.

The Workers' Compensation Act has established a two-track benefit system for workers who suffer permanent consequences because of their workplace injuries. It provides compensation for the permanent impairment (the non-economic loss award for the loss of enjoyment of everyday life) and the future loss of earnings (the economic loss award for the employment impact) which result from the injury.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information contained in the NEL "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Did the Board have the authority to collect the personal information, in accordance with section 38(2) of the Act?
- (C) Was the personal information disclosed in accordance with section 42 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information contained in the NEL "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information", in part, as:

recorded information about an identifiable individual, including,

- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

We reviewed a copy of the NEL. It contained the complainant's name together with information about the complainant's medical condition and her sexual life with her spouse.

It is our view that the information contained in the NEL met the requirements of paragraph (h) of the definition of "personal information" in section 2(1) of the Act.

Conclusion: The information contained in the NEL was personal information as defined in section 2(1) of the Act.

Issue B: Did the Board have the authority to collect the personal information, in accordance with section 38(2) of the Act?

Section 38(2) of the Act states:

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(5) The Board shall determine in accordance with the prescribed rating schedule and having regard to medical assessments conducted under this section the degree of a worker's permanent impairment expressed as a percentage of total permanent impairment.

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The Board stressed that it is important to understand that this is an extensive evaluation of the impact of the worker's pain on his or her everyday life, and not just his/her work. This allows for compensation for changes from pre-accident levels of functioning. While sexual function may be a more sensitive area that is being assessed, it is no less important than the many other areas being examined to arrive at an award. In short, questions of a sexual nature are necessary

to conduct a thorough assessment.

Based on the above, it is our view that the Board had the authority to collect the information concerning the complainant's sexual life, as it was necessary to the proper administration of a lawfully authorized activity, that being, the conduct of a NEL medical assessment to determine appropriate compensation. Thus, the Board collected the complainant's personal information in accordance with section 38(2) of the Act.

Conclusion: The Board had the authority to collect the information, in accordance with section 38(2) of the Act.

Issue C: Was the personal information disclosed in accordance with section 42 of the Act?

The complaint concerns disclosure to the complainant's employer. Under the Act, personal information in the custody or control of an institution cannot be disclosed except in the specific circumstances outlined in section 42.

Section 42(e) of the Act states:

An institution shall not disclose personal information in its custody or under its control except,

- (e) for the **purpose of complying with an Act of the Legislature** or an Act of Parliament or a treaty, agreement or arrangement thereunder; (emphasis added)

The Board cited section 42(12) of the WCA as its legislative authority for the disclosure, in accordance with section 42(e) of the Act.

Section 42(12) of the WCA requires the Board to send a copy of the NEL to the accident employer. It states:

- (12) The Board shall send a copy of the medical assessment conducted under subsection (9) to the worker and to the employer who employed the worker on the date of the injury.

In our view, the Board's disclosure of the complainant's personal information to the employer was in accordance with section 42(e) of the Act, for the purpose of complying with an Act of the Legislature.

Conclusion: The Board's disclosure of the NEL to the employer was in accordance with section 42 of the Act.

Other Matters

During the course of this investigation, the following matter was identified which should be brought to the Board's attention.

Mailing Procedures for NELs

We asked the Board about the manner in which NELs are sent to employers. We were advised that employers' mailing addresses are identified on the computer system. If an employer has designated a named individual for its correspondence on a claim, the Adjudicator will update the system to state attention to this individual and the NEL would be sent, addressed accordingly. Accompanying the NEL is a cover letter reminding the employer of its obligation under the WCA to not disclose the information. Confidential envelopes are not used.

We are concerned that the Board does not use confidential envelopes when mailing NELs to employers, and that where an appropriate official has not been identified, sensitive medical information may be viewed unnecessarily by the employer's staff, eg. individuals responsible for opening and delivering the employer's mail.

SUMMARY OF CONCLUSIONS

- The information contained in the NEL was personal information as defined in section 2(1) of the Act.
- The Board had the authority to collect the personal information, in accordance with section 38(2) of the Act.
- The Board's disclosure of the NEL to the employer was in accordance with section 42 of the Act.

RECOMMENDATION

We recommend that the Board use confidential envelopes when mailing out medical information to employers. The envelopes should be addressed to a named officer, where this individual has been identified by the employer. If an officer has not been designated, a generic title should be used, for example, "WCB Claims Administrator".

Within six months of receiving this report, the Board should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation.

Original signed by:
Susan Anthistle
Compliance Review Officer

November 26, 1993
Date



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

Case No. 193-052P
Ministry of Health

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INVESTIGATION REPORT

INVESTIGATION I93-052P

MINISTRY OF HEALTH



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning one of the Ministry of Health's psychiatric hospitals (the Hospital).

The complainant, an employee of the Hospital, had been required to provide a medical certificate to the Hospital after being absent from work for one day. The medical certificate was then disclosed to the Hospital's Assistant Administrator, Patient Services (the Assistant Administrator); Regional Human Resources Administrator (the HR Administrator); and one of the Ministry's legal counsels (the Legal Counsel).

The complainant stated that the disclosure of her personal information in the medical certificate to these individuals was contrary to the Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Were the disclosures of the personal information to the Assistant Administrator, the HR Administrator, and the Legal Counsel, in accordance with section 42 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The complainant provided a copy of the medical certificate in question. It contained the complainant's name, the name and address of her physician, the date she had been absent from work, and the fact that she had been absent from work for a "medical reason".

It is our view that the information contained in the medical certificate met the requirements in paragraph (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was "personal information" as defined in section 2(1) of the Act.

Issue B: Were the disclosures of the personal information to the Assistant Administrator, the HR Administrator, and the Legal Counsel, in accordance with section 42 of the Act?

In support of her complaint, the complainant provided a policy dated 91/10/31 from the Hospital's Policy and Procedure Manual (the Policy). The subject of the Policy was "Confidentiality of Employee Health Records". The Purpose of the Policy was to safeguard the privacy of all employees of the Hospital, and to ensure that all individuals using Employee Health Services were protected from unauthorized or inappropriate disclosure of occupational health information.

Point 3.3 of the Policy states:

Information released to management shall be limited to the worker's fitness/unfitness to work, or restrictions on the worker's ability to perform all aspects of the job (Appendix 2). When an employee is absent from work due to injury or illness, the original copy of a doctor's certificate should be submitted to Employee Health Services. The information regarding the probable date of return and the prognosis will be relayed to the supervisor or manager concerned on a need-to-know basis only. No diagnosis or details of treatment are to be disclosed to management.

The complainant stated that she had provided the medical certificate to her supervisor, upon request by the Assistant Administrator. When it was received, it was reviewed by the Assistant Administrator and the HR Administrator and discussed with Legal Counsel. The complainant submitted that, based upon the Hospital's Policy, the actual medical certificate should not have been disclosed by her supervisor to these individuals but should have gone directly to Employee Health Services where any relevant information would have been relayed to management on a need to know basis.

Under the Act, personal information in the custody or control of an institution cannot be disclosed except in the specific circumstances outlined in section 42.

With regard to the disclosure of the personal information in the medical certificate, the Ministry has relied upon section 42(d) of the Act, stating that the medical certificate was disclosed to the Assistant Administrator, the HR Administrator, and the Legal Counsel for justifiable, organizational reasons.

Section 42(d) of the Act states:

An institution shall not disclose personal information in its custody or under its control except,

- (d) where disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and where disclosure is necessary and proper in the discharge of the institution's functions;

In our view, verifying an employee's absence from work by requesting an employee's medical certificate is an administrative function of the Hospital.

The Assistant Administrator is the Chief Nursing Officer responsible for the entire administrative operation of the Patient Services Department. The HR Administrator is responsible for assisting the Assistant Administrator in ensuring that policies and procedures are interpreted correctly and uniformly across the Department and Hospital. In the circumstances of this case, the Assistant Administrator and the HR Administrator were involved in a legal matter between a group of employees, including the complainant, and the Hospital. The legal matter arose from an order made under the Occupational Health and Safety Act regarding minimum staffing requirements at the Hospital. The matter was dealt with at a hearing by the Ministry of Labour.

The Assistant Administrator and the HR Administrator thought that there may have been a potential overlap between the absence of the complainant from work and the cancellation of the second day of the hearing with the Ministry of Labour, which the complainant had been scheduled to attend. The Hospital asked for a medical certificate from the complainant in order to verify the reason for her absence from work. In our view, and in accordance with the Policy, the Assistant Administrator and the HR Administrator needed the complainant's name and the date and reason she was absent from work, ie. "medical", in the performance of their duties of verifying the reason for the complainant's absence. In our view, the description of "medical reason" on the medical certificate did not reveal information about the complainant's diagnosis or details of treatment.

In our view, the disclosure of the complainant's name and the date and reason she was absent from work, to both the Assistant Administrator and the HR Administrator was a disclosure to officers who needed the information in the performance of their duties, and the disclosure was necessary and proper in the discharge of one of the Hospital's functions. Therefore, the disclosure was in accordance with section 42(d) of the Act.

The Hospital stated that, like the Assistant Administrator and the HR Administrator, the Legal Counsel also needed the complainant's name and the date and reason for her absence, in the performance of her duties, in accordance with section 42(d) of the Act. In our draft report, we stated that it was our view that in the circumstances of this case and at the time of the actual disclosure, the Legal Counsel's duties were limited to representing the Hospital at the hearing held by the Ministry of Labour regarding the occupational health and safety matter. Verifying the reason for the complainant's absence was a separate matter which was not the responsibility of the Legal Counsel and was not relevant to her responsibility of representing the Hospital in the legal matter. Given this, it was our view that the Legal Counsel did not need the complainant's personal information in the performance of her duties.

In its comments on our draft report, the Ministry stated that the Legal Counsel's responsibility was not limited to representing the Ministry regarding the occupational health and safety matter. She was asked by the Hospital for her legal advice as to whether or not, under the terms of the Collective Agreement, the Hospital could or should request a medical certificate from the complainant. She was also consulted regarding the adequacy of the medical certificate provided by the complainant, and she was consulted on the basis that, should a grievance result, she would be acting as counsel on behalf of the Hospital at the grievance hearing. Consequently, the Legal Counsel's role in this matter and the disclosure of the personal information to her was not solely on the basis that she had been representing the Hospital in the occupational health and safety matter.

While the Legal Counsel was asked to provide advice for the reasons identified above, it is our view that **at the time of the disclosure**, the complainant's personal information in the medical certificate was not needed by the Legal Counsel in the performance of her duties. It is our view that the Legal Counsel could have given her advice without the complainant's identity being disclosed to her.

Therefore, our view remains that the disclosure of the complainant's name together with the date and reason for her absence to the Legal Counsel was not in accordance with section 42(d) of the Act. It is also our view that no other provisions in section 42 applied to this disclosure.

The complainant's medical certificate also included her personal physician's name and address. Although the Hospital submitted that the Assistant Administrator, the HR Administrator, and the Legal Counsel needed this particular information in the performance of their duties, the Hospital's Policy does not identify an employee's physician's name and address as information from a medical certificate about which management would need to know. It is our view that the Hospital, in drafting its Policy, would have given careful consideration to identifying the specific information that management would require from an employee's medical certificate. Given this, and considering the relevance of this information to the legal matter the Hospital and complainant were involved in, it is our view that the Assistant Administrator, the HR Administrator, and Legal Counsel did not need the physician's name and address in the performance of their duties.

Therefore, in our view, the disclosure of the complainant's physician's name and address was not in accordance with section 42(d) of the Act. It is also our view that no other provisions in section 42 applied to this disclosure.

Conclusion: The disclosure of the complainant's name together with the date and reason for her absence, to the Assistant Administrator and the HR Administrator was in accordance with section 42 of the Act. The disclosure of the same information to the Legal Counsel was not.

The disclosure of the complainant's physician's name and address was not in accordance with section 42 of the Act.

Other Matters

The Hospital informed us that it is involved in rewriting the Policy so that the Hospital's "Occupational Health Services" will be the first recipient of a medical note or certificate. The Hospital stated that an employee's supervisor will not receive a medical certificate from the employee. The certificate will be delivered directly to the Occupational Health Nurse. If the note is needed for administrative reasons, the personal medical information will be severed by the Occupational Health Nurse. The revised draft policy clearly identifies the information that may be relayed to management on a need to know basis. It also states that:

All managers should be familiar with this policy. Managers should ensure that their staff are aware of the policy and should direct employees to submit medical certificates to Occupational Health Services.

SUMMARY OF CONCLUSIONS

- The information in question was "personal information" as defined in section 2(1) of the Act.
- The disclosure of the complainant's name together with the date and reason for her absence, to the Assistant Administrator and the HR Administrator was in accordance with section 42 of the Act. The disclosure of the same information to the Legal Counsel was not.
- The disclosure of the complainant's physician's name and address was not in accordance with section 42 of the Act.

RECOMMENDATIONS

We recommend that:

- 1) the Ministry take steps to ensure that all Hospital Staff are aware of the limited purposes for which the disclosure of personal information is permitted under section 42 of the Act; and,
- 2) the Ministry take steps to ensure that all Hospital Staff, including management, are aware of the circumstances under which personal information contained in an employee's medical certificate may be released, further to the final revised Policy.

Within six months of receiving this report, the Ministry should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendations.

Original signed by: _____
Susan Anthistle
Compliance Review Officer

December 16, 1993
Date



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

Government of Ontario
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INVESTIGATION REPORT

INVESTIGATION I93-052P

MINISTRY OF HEALTH



80 Bloor Street West,
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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning one of the Ministry of Health's psychiatric hospitals (the Hospital).

The complainant, an employee of the Hospital, had been required to provide a medical certificate to the Hospital after being absent from work for one day. The medical certificate was then disclosed to the Hospital's Assistant Administrator, Patient Services (the Assistant Administrator); Regional Human Resources Administrator (the HR Administrator); and one of the Ministry's legal counsels (the Legal Counsel).

The complainant stated that the disclosure of her personal information in the medical certificate to these individuals was contrary to the Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Were the disclosures of the personal information to the Assistant Administrator, the HR Administrator, and the Legal Counsel, in accordance with section 42 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The complainant provided a copy of the medical certificate in question. It contained the complainant's name, the name and address of her physician, the date she had been absent from work, and the fact that she had been absent from work for a "medical reason".

It is our view that the information contained in the medical certificate met the requirements in paragraph (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was "personal information" as defined in section 2(1) of the Act.

Issue B: Were the disclosures of the personal information to the Assistant Administrator, the HR Administrator, and the Legal Counsel, in accordance with section 42 of the Act?

In support of her complaint, the complainant provided a policy dated 91/10/31 from the Hospital's Policy and Procedure Manual (the Policy). The subject of the Policy was "Confidentiality of Employee Health Records". The Purpose of the Policy was to safeguard the privacy of all employees of the Hospital, and to ensure that all individuals using Employee Health Services were protected from unauthorized or inappropriate disclosure of occupational health information.

Point 3.3 of the Policy states:

Information released to management shall be limited to the worker's fitness/unfitness to work, or restrictions on the worker's ability to perform all aspects of the job (Appendix 2). When an employee is absent from work due to injury or illness, the original copy of a doctor's certificate should be submitted to Employee Health Services. The information regarding the probable date of return and the prognosis will be relayed to the supervisor or manager concerned on a need-to-know basis only. No diagnosis or details of treatment are to be disclosed to management.

The complainant stated that she had provided the medical certificate to her supervisor, upon request by the Assistant Administrator. When it was received, it was reviewed by the Assistant Administrator and the HR Administrator and discussed with Legal Counsel. The complainant submitted that, based upon the Hospital's Policy, the actual medical certificate should not have been disclosed by her supervisor to these individuals but should have gone directly to Employee Health Services where any relevant information would have been relayed to management on a need to know basis.

Under the Act, personal information in the custody or control of an institution cannot be disclosed except in the specific circumstances outlined in section 42.

With regard to the disclosure of the personal information in the medical certificate, the Ministry has relied upon section 42(d) of the Act, stating that the medical certificate was disclosed to the Assistant Administrator, the HR Administrator, and the Legal Counsel for justifiable, organizational reasons.

Section 42(d) of the Act states:

An institution shall not disclose personal information in its custody or under its control except,

- (d) where disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and where disclosure is necessary and proper in the discharge of the institution's functions;

In our view, verifying an employee's absence from work by requesting an employee's medical certificate is an administrative function of the Hospital.

The Assistant Administrator is the Chief Nursing Officer responsible for the entire administrative operation of the Patient Services Department. The HR Administrator is responsible for assisting the Assistant Administrator in ensuring that policies and procedures are interpreted correctly and uniformly across the Department and Hospital. In the circumstances of this case, the Assistant Administrator and the HR Administrator were involved in a legal matter between a group of employees, including the complainant, and the Hospital. The legal matter arose from an order made under the Occupational Health and Safety Act regarding minimum staffing requirements at the Hospital. The matter was dealt with at a hearing by the Ministry of Labour.

The Assistant Administrator and the HR Administrator thought that there may have been a potential overlap between the absence of the complainant from work and the cancellation of the second day of the hearing with the Ministry of Labour, which the complainant had been scheduled to attend. The Hospital asked for a medical certificate from the complainant in order to verify the reason for her absence from work. In our view, and in accordance with the Policy, the Assistant Administrator and the HR Administrator needed the complainant's name and the date and reason she was absent from work, ie. "medical", in the performance of their duties of verifying the reason for the complainant's absence. In our view, the description of "medical reason" on the medical certificate did not reveal information about the complainant's diagnosis or details of treatment.

In our view, the disclosure of the complainant's name and the date and reason she was absent from work, to both the Assistant Administrator and the HR Administrator was a disclosure to officers who needed the information in the performance of their duties, and the disclosure was necessary and proper in the discharge of one of the Hospital's functions. Therefore, the disclosure was in accordance with section 42(d) of the Act.

The Hospital stated that, like the Assistant Administrator and the HR Administrator, the Legal Counsel also needed the complainant's name and the date and reason for her absence, in the performance of her duties, in accordance with section 42(d) of the Act. In our draft report, we stated that it was our view that in the circumstances of this case and at the time of the actual disclosure, the Legal Counsel's duties were limited to representing the Hospital at the hearing held by the Ministry of Labour regarding the occupational health and safety matter. Verifying the reason for the complainant's absence was a separate matter which was not the responsibility of the Legal Counsel and was not relevant to her responsibility of representing the Hospital in the legal matter. Given this, it was our view that the Legal Counsel did not need the complainant's personal information in the performance of her duties.

In its comments on our draft report, the Ministry stated that the Legal Counsel's responsibility was not limited to representing the Ministry regarding the occupational health and safety matter. She was asked by the Hospital for her legal advice as to whether or not, under the terms of the Collective Agreement, the Hospital could or should request a medical certificate from the complainant. She was also consulted regarding the adequacy of the medical certificate provided by the complainant, and she was consulted on the basis that, should a grievance result, she would be acting as counsel on behalf of the Hospital at the grievance hearing. Consequently, the Legal Counsel's role in this matter and the disclosure of the personal information to her was not solely on the basis that she had been representing the Hospital in the occupational health and safety matter.

While the Legal Counsel was asked to provide advice for the reasons identified above, it is our view that **at the time of the disclosure**, the complainant's personal information in the medical certificate was not needed by the Legal Counsel in the performance of her duties. It is our view that the Legal Counsel could have given her advice without the complainant's identity being disclosed to her.

Therefore, our view remains that the disclosure of the complainant's name together with the date and reason for her absence to the Legal Counsel was not in accordance with section 42(d) of the Act. It is also our view that no other provisions in section 42 applied to this disclosure.

The complainant's medical certificate also included her personal physician's name and address. Although the Hospital submitted that the Assistant Administrator, the HR Administrator, and the Legal Counsel needed this particular information in the performance of their duties, the Hospital's Policy does not identify an employee's physician's name and address as information from a medical certificate about which management would need to know. It is our view that the Hospital, in drafting its Policy, would have given careful consideration to identifying the specific information that management would require from an employee's medical certificate. Given this, and considering the relevance of this information to the legal matter the Hospital and complainant were involved in, it is our view that the Assistant Administrator, the HR Administrator, and Legal Counsel did not need the physician's name and address in the performance of their duties.

Therefore, in our view, the disclosure of the complainant's physician's name and address was not in accordance with section 42(d) of the Act. It is also our view that no other provisions in section 42 applied to this disclosure.

Conclusion: The disclosure of the complainant's name together with the date and reason for her absence, to the Assistant Administrator and the HR Administrator was in accordance with section 42 of the Act. The disclosure of the same information to the Legal Counsel was not.

The disclosure of the complainant's physician's name and address was not in accordance with section 42 of the Act.

Other Matters

The Hospital informed us that it is involved in rewriting the Policy so that the Hospital's "Occupational Health Services" will be the first recipient of a medical note or certificate. The Hospital stated that an employee's supervisor will not receive a medical certificate from the employee. The certificate will be delivered directly to the Occupational Health Nurse. If the note is needed for administrative reasons, the personal medical information will be severed by the Occupational Health Nurse. The revised draft policy clearly identifies the information that may be relayed to management on a need to know basis. It also states that:

All managers should be familiar with this policy. Managers should ensure that their staff are aware of the policy and should direct employees to submit medical certificates to Occupational Health Services.

SUMMARY OF CONCLUSIONS

- The information in question was "personal information" as defined in section 2(1) of the Act.
- The disclosure of the complainant's name together with the date and reason for her absence, to the Assistant Administrator and the HR Administrator was in accordance with section 42 of the Act. The disclosure of the same information to the Legal Counsel was not.
- The disclosure of the complainant's physician's name and address was not in accordance with section 42 of the Act.

RECOMMENDATIONS

We recommend that:

- 1) the Ministry take steps to ensure that all Hospital Staff are aware of the limited purposes for which the disclosure of personal information is permitted under section 42 of the Act; and,
- 2) the Ministry take steps to ensure that all Hospital Staff, including management, are aware of the circumstances under which personal information contained in an employee's medical certificate may be released, further to the final revised Policy.

Within six months of receiving this report, the Ministry should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendations.

Original signed by:
Susan Anthistle
Compliance Review Officer

December 16, 1993
Date



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INVESTIGATION REPORT

INVESTIGATION I93-053M

A SEPARATE SCHOOL BOARD



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a separate school board (the Board).

The complainant, a trustee for the Board, had informed a newspaper reporter of certain budgetary measures that the Board had been considering. The complainant became privy to this information during an in camera meeting of the Board. This information subsequently appeared in a newspaper article.

Since the complainant had apparently not been at liberty to release this information, the Board subsequently reprimanded her for this "indiscretion". The reprimand occurred during one of the Board's regular open meetings. While the members of the Board discussed the reprimand in camera, the Board made the following resolution in open session:

That (the named complainant) be reprimanded for her lack of discretion concerning the comments made during a recent interview as published in the (named newspaper) ...

The above resolution was also recorded in the minutes of the Board's meeting, which were available to the public.

The complainant believed that the Board had disclosed her personal information during the open meeting, contrary to the Municipal Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Did section 27 of the Act apply to this personal information?
- (C) Was the Board's disclosure of the personal information, in accordance with section 32 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual; ("renseignements personnels")

The Board stated that the information in question was not the complainant's "personal information", since it concerned the complainant in her professional rather than her private capacity.

In Order 170, Inquiry Officer John McCamus found that notes of proposed disciplinary action against an employee were considered to be the personal information of that employee. It is, thus, our view that similarly, in this case, the complainant's name together with information about her reprimand was information which met the requirements of paragraph (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was personal information as defined in section 2(1) of the Act.

Issue B: Did section 27 of the Act apply to this personal information?

Section 27 of the Act states that the privacy provisions of the Act do not apply to personal information that is maintained for the purpose of creating a record that is available to the general public. Specifically, section 27 states:

This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public.

It was the Board's view that section 27 of the Act applied in the circumstances of this case. The Board stated that since the complainant had gone to the newspaper and made this issue public, any subsequent disclosure by the Board would not have contravened the Act since the information was already public.

In our view, it cannot be said that the Board was maintaining the information concerning the complainant's reprimand, for the purpose of making that information available to the general public. Thus, the Board may not rely on section 27 of the Act to exempt this information from the privacy provisions of the Act.

Conclusion: Section 27 of the Act did not apply to the personal information.

Issue C: Was the Board's disclosure of the personal information, in accordance with section 32 of the Act?

Under the Act, an institution cannot disclose personal information in its custody or under its control except in the specific circumstances outlined in section 32 (see Appendix A for the full text).

The Board advised that it had reprimanded the complainant in compliance with its policy entitled "Confidentiality of Information". The Board provided us with a copy of this policy, which stated, in part, that discussions during a Committee of the Whole meeting (i.e., an in camera meeting) are "absolutely confidential". The policy further stated that the Chairman, with the Board's support, may reprimand a trustee for his or her indiscretion and lack of solidarity. Based on these policies, the Board stated that it had reprimanded the complainant in a public meeting because she had disclosed discussions of an in camera meeting to the newspaper reporter.

The Board submitted that it had to follow these policies which were in place before the Act came into effect. The Act came into force in January 1991. Institutions covered by the Act are required to comply with the Act's privacy provisions regarding the collection, use and disclosure of personal information. Thus, any disclosure by the Board of personal information in its custody or under its control must be in compliance with the disclosure provisions of section 32 of the Act.

We have examined section 32 and have found that none of the exceptions listed applied to the Board's disclosure. It is, therefore, our view that the Board disclosed the complainant's personal information at an open meeting contrary to section 32 of the Act.

Conclusion: The Board's disclosure of the personal information was not in accordance with section 32 of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was personal information as defined in section 2(1) of the Act.
- Section 27 of the Act did not apply to the personal information.
- The Board's disclosure of the personal information was not in accordance with section 32 of the Act.

RECOMMENDATIONS

We recommend that the Board take steps to ensure that disclosures of personal information are in accordance with the Act, for example, by amending or clarifying its policies accordingly.

Within six months of receiving this report, the Board should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation.

Original signed by: _____

Susan Anthistle
Compliance Review Officer

January 24, 1994

Date

APPENDIX A

32. An institution shall not disclose personal information in its custody or under its control except,
- (a) in accordance with Part I;
 - (b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;
 - (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
 - (d) if the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and if the disclosure is necessary and proper in the discharge of the institution's functions;
 - (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or treaty;
 - (f) if disclosure is by a law enforcement institution,
 - (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
 - (ii) to another law enforcement agency in Canada;
 - (g) if disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
 - (h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification is mailed to the last known address of the individual to whom the information relates;
 - (i) in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased;
 - (j) to the Minister;
 - (k) to the Information and Privacy Commissioner;
 - (l) to the Government of Canada or the Government of Ontario in order to facilitate the auditing of shared cost programs.



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INVESTIGATION REPORT

INVESTIGATION I93-054P

MINISTRY OF ENVIRONMENT AND ENERGY



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of Environment and Energy (the Ministry).

The complainant was concerned that the Ministry had improperly disclosed his personal information in its publication "ENVIRONMENTAL HIGHLIGHTS" and to the media, contrary to the provisions of the Freedom of Information and Protection of Privacy Act (the Act). In addition, the complainant was concerned that the personal information disclosed was inaccurate.

Issues Arising from the investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Did section 37 of the Act apply to the personal information?
- (C) Was the disclosure of the personal information in accordance with section 42 of the Act?

The issue regarding the complainant's concern about the accuracy of the personal information disclosed has been addressed under the "Other Matters" section of this report.

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?

The information disclosed in the published article contained the complainant's name, the company where he had been employed, details of his conviction for offences under the Environmental Protection Act (the EPA), and the amount the complainant was said to have been fined. Similar information was contained in a press release.

According to the Ministry, the charges against the complainant were laid as a direct result of his employment-related activities rather than his private activities. Thus, it was the Ministry's position that the information disclosed was not the complainant's personal information.

In Order P-434, Assistant Commissioner Mitchinson held that information is not automatically excluded from the scope of section 2(1), "simply because it was created in the employment context."

The article and press release identified that it was the complainant who had been convicted and fined. Although the complainant had been charged as a result of his employment activities, it was he, personally, who had been convicted and ordered by the court to make restitution. Therefore, it is our view that the information in the article and press release was about an identifiable individual and thus, met the requirements of paragraph (h) of the definition of "personal information" in section 2(1) of the Act which states that:

"personal information" means recorded information about an identifiable individual, including,

- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

Conclusion: The information in question was personal information as defined in section 2(1) of the Act.

Issue B: Did section 37 of the Act apply to the personal information?

The Ministry stated that it enforces the EPA and has the authority to collect personal information as part of its investigations process into alleged violations. In this case, the Ministry had conducted an investigation into the activities of the employees of an incorporated company which had resulted in charges being laid against the complainant. The Ministry submitted that the charges against the complainant had been dealt with by the court, where information about the complainant's activities had been placed on record and had thus, become available to the public.

The Ministry stated that in this case, it was merely reflecting information that was already available to the public in order to serve as a deterrent to would-be-polluters.

Section 37 of the Act states:

This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public.

It is our view that under section 37 of the Act, personal information maintained by an institution can be excluded from the application of Part III of the Act only if the personal information is maintained by that institution for the purpose of creating a record which is available to the

general public. In this particular case, it is our view that the Ministry could not be said to have been maintaining the complainant's personal information specifically for the purpose of creating a record that was available to the general public. Therefore, section 37 of the Act did not apply and the privacy provisions of Part III were not excluded.

Conclusion: Section 37 of the Act did not apply to the personal information at issue.

Issue C: Was the disclosure of the personal information in accordance with section 42 of the Act?

Under the Act, personal information in the custody or under the control of an institution cannot be disclosed except in the specific circumstances outlined in section 42.

The Ministry submitted that the personal information was disclosed in accordance with section 42(c) of the Act, which states:

An institution shall not disclose personal information in its custody or under its control except,

- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;

Section 43 of the Act further provides that:

The purpose of a use or disclosure of personal information that has been collected directly from the individual to whom the information relates is a consistent purpose under clauses 41(b) and 41(c) only if the individual might reasonably have expected such a use or disclosure.

Where personal information has been collected indirectly, a consistent purpose is one which is "reasonably compatible" with the purpose for which the information has been compiled.

The Ministry stated that in enforcing the EPA, it has the role of informing the public of the ramifications of violations of the EPA so as to deter would-be-polluters. In this case, the Ministry publicized the complainant's violations and the amount of his restitution in order to advise the public and would-be-polluters of the Ministry's enforcement activities. The Ministry stated that by publicizing this information, the public was made aware of its efforts in a geographical area where concerned citizens and the media had shown particular attention to the issues.

In this case, the complainant's personal information had originated from proceedings conducted in court. Except in the most exceptional circumstances, proceedings before the courts are open to the public. This serves the dual purpose of informing the public of judicial proceedings as well as acting as a deterrent to potential would-be-offenders.

In our view, the Ministry subsequently disclosed the complainant's personal information for substantially similar purposes: namely, to inform the public of its enforcement activities and to deter would-be-polluters. Accordingly, it is our view that the Ministry's disclosure was for a purpose that was reasonably compatible with the purpose for which the personal information had originally been compiled by the court. Therefore, the disclosure was for a consistent purpose and was in accordance with section 42(c) of the Act.

Conclusion: The disclosure of the personal information was in accordance with section 42 of the Act.

Other Matters

The complainant also stated that some of the personal information contained in the article and press release was inaccurate. The Ministry acknowledged that the information disclosed was not entirely accurate and has responded to the complainant's request for correction under section 47(2) of the Act.

SUMMARY OF CONCLUSIONS

- . The information in question was "personal information" as it is defined in section 2(1) of the Act.
- . Section 37 of the Act did not apply to the personal information at issue.
- . The disclosure of the personal information was in accordance with section 42 of the Act.

Original signed by: _____
Ann Cavoukian, Ph.D
Assistant Commissioner

January 26, 1994

Date



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

Governing
Publication

INVESTIGATION REPORT

INVESTIGATION I93-059P

MINISTRY OF HEALTH



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of Health (the Ministry).

The complainant was concerned that the Ministry had disclosed her personal information to the Ontario Breast Screening Program (the OBSP) contrary to the provisions of the Freedom of Information and Protection of Privacy Act (the Act).

The complainant had received a letter from the OBSP about a breast screening program. In this letter, the Director of the OBSP suggested that since the complainant was of "a certain age", she should be aware of certain facts about health risks. The Director also stated: "Your name was selected in a confidential manner using your Health Number and your age".

The OBSP had asked the Ministry to perform a mailing to women between the ages of 50 and 69, to make them aware of, and to invite them to, local breast screening clinics. The Ministry had set up a "confidentiality agreement" with Canada Post to perform the mailing from a listing that the Ministry had provided for four test sites. The listing provided to Canada Post consisted of the names and addresses of women who were between the ages of 50 and 69.

The OBSP had provided the aforementioned form letter to Canada Post. This form letter did not contain any personal information when provided by the OBSP. Canada Post then conducted a "mail merge" of the information provided by the Ministry (i.e., the names and addresses from the listing were inserted onto the form letters provided by the OBSP). Canada Post subsequently sent a letter to each of the targeted individuals.

At no time was personal information ever disclosed directly to the OBSP. The OBSP was not aware as to which individuals had received the letter unless the individual had chosen to contact one of the clinics. As well, the health number was never disclosed to either the OBSP or Canada Post.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Was the disclosure by the Ministry to Canada Post in accordance with section 42 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
...
- (d) the address, telephone number, fingerprints or blood type of the individual,
...
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual; (emphasis added)

As already mentioned, the listing provided to Canada Post consisted of the names and addresses of women who were between the ages of 50 and 69.

In our view, the information contained in this listing met the requirements in paragraphs (a), (d), and (h) of the definition of "personal information" in section 2(1) of the Act.

Conclusion: The information in question was "personal information", as defined in section 2(1) of the Act.

Issue B: Was the disclosure by the Ministry to Canada Post in accordance with section 42 of the Act?

Section 42 of the Act prohibits the disclosure of personal information by an institution, except in certain circumstances. Section 42(c), in particular, states:

An institution shall not disclose personal information in its custody or under its control except,

- (c) for the purpose for which it was obtained or compiled or for a **consistent purpose**; (emphasis added)

Section 43 of the Act states:

Where personal information has been collected directly from the individual to whom the information relates, the purpose of a use or disclosure of that information is a consistent purpose under clauses 41(b) and 42(c) only if the individual might reasonably have expected such a use or disclosure.

The Ministry stated that it had collected the personal information in question on the Registered Persons Database for health planning and co-ordination purposes. This is substantiated by the notice of collection appearing on the Registration for Ontario Health Coverage form which states that:

Collection of the information on this form is for the ... administration of the Health Insurance and the Ontario Drug Benefit Acts and for health planning and coordination. It is collected/used for these purposes under the authority of the Ministry of Health Act, section 6(1,2), Health Insurance Act, section 4(2)(b,f), 10, 11(1) and Regulation 689/86 under the Ontario Drug Benefit Act, section 2.

The Ministry further stated that the Minister of Health has the power to oversee and promote the health and physical well-being of the people of Ontario pursuant to section 6(2) of the Ministry of Health Act which states:

It is the function of the Minister and he or she has power to carry out the following duties:

...

2. To oversee and promote the health and the physical and mental well-being of the people of Ontario.

...

Thus, one of the purposes for which the Ministry had obtained the personal information in question was for "health planning and co-ordination". It is our view that "health promotion" (from section 6(2) of the Ministry of Health Act) is compatible with health planning and co-ordination. In "promoting health", the Ministry disclosed the personal information to Canada Post so that the OBSP letter could be sent to targeted individuals. It is our view that these individuals could have reasonably expected such a disclosure of their personal information. Therefore, the Ministry's disclosure of the personal information to Canada Post was for a consistent purpose, in accordance with section 42(c) of the Act.

Conclusion: The disclosure of the personal information by the Ministry to Canada Post was in accordance with section 42 of the Act.

Other Matters

During the course of this investigation, the following matter was identified which should be brought to the institution's attention

In the "Background of the Complaint", we indicated that the Ministry had set up a "confidentiality agreement" with Canada Post to perform the mailing. We reviewed this agreement and noted that it was signed only by the OBSP and Canada Post. The Ministry did not sign this agreement but sent a covering letter to Canada Post, stating that the agreement was "acceptable" to the Ministry. Since the Ministry has custody and control of this personal information, it is our view that the Ministry should also have signed the agreement.

SUMMARY OF CONCLUSIONS

- The information in question was "personal information", as defined in section 2(1) of the Act.
- The disclosure of the personal information by the Ministry to Canada Post was in accordance with section 42 of the Act.

RECOMMENDATIONS

We recommend that the Ministry sign such agreements since it has custody and control of the personal information in question.

Within six months of receiving this report, the Ministry should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation.

Original signed by: _____
Susan Anthistle
Compliance Review Officer

January 13, 1994
Date



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

INVESTIGATION REPORT

INVESTIGATION I93-079M

A MUNICIPALITY



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Community Services Department of a Municipality (the Municipality).

The complainant, a day care operator, wished to enter into a purchase of service agreement with the Municipality. He was required to provide certain information to the Municipality. The complainant was concerned that the collection of this information was contrary to Municipal Freedom of Information and Protection of Privacy Act (the Act).

Collection 1:

The complainant was required to fill out a "Budget Submission For Purchase of Service Agreement" package. The prescribed forms dictated that the complainant provide information relating to himself and to all staff members of his day care operation and their projected salaries. The complainant was concerned with the collection of this information. One of the forms in the package categorized staff by position. The complainant maintained that since he was the only person who was employed as a supervisor, he was clearly identifiable.

Collection 2:

The complainant wished to employ an individual at his day care centre who did not have the requisite qualifications under the Day Nurseries Act. Accordingly, the complainant made an application to the Ministry of Community and Social Services, for a provincial provisionally trained exemption under the Day Nurseries Act, on behalf of the individual.

Day care operators involved in purchase of service agreements with the Municipality must, according to the Municipality's Operating Criteria, submit an application for a **municipal** provisionally trained exemption as well. The Municipality required several supplementary documents to be filed with the application which would be taken into consideration in determining whether to approve the application. The complainant was concerned that the collection of some of the supplementary documentation was contrary to the Act.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Was the Municipality's collection of the personal information in accordance with section 28(2) of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

Collection 1:

The Budget Submission For Purchase of Service Agreement contained staff members' names, positions held; actual annual salary paid to the position the previous year without a grant contribution; and the annual salary estimated for the position without a grant contribution, for the applicable year.

In our view, this information met the requirements of paragraphs (b) and (h) of the definition of "personal information", in section 2(1) of the Act.

Collection 2:

The application for a provisionally trained exemption required the submission of the provincial approval letter, the advertisement of vacancy or receipts from advertisements, the individual's diploma, a transcript of courses, a letter from an educational institution confirming outstanding courses and/or practicums, a letter of intent from a staff member, and A.E.C.E.O. Exam confirmation/results.

Of the required information, the complainant provided the provincial approval letter, the individual's diploma, and a transcript of the individual's courses. In our view, this information met the requirements of paragraphs (b) and (h) of the definition of "personal information", in section 2(1) of the Act.

Conclusion: The information in question was personal information as defined in section 2(1) of the Act.

Issue B: Was the Municipality's collection of the personal information in accordance with section 28(2) of the Act?

Section 28(2) states:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or **necessary to the proper administration of a lawfully authorized activity**. (emphasis added)

The Municipality stated that, at its discretion, it may provide for the establishment of day nurseries. It may also enter into agreements with day care operators for nursery services, and may make expenditures as are necessary for those services. The Municipality indicated that these activities are authorized by section 3 of the Day Nurseries Act.

Section 3 of the Day Nurseries Act states:

(1) The council of a municipality may, subject to this Act and the regulations, by by-law provide for the establishment of day nurseries.

(2) The council of a municipality may pass by-laws granting aid to day nurseries.

(3) The council of a municipality may subject to this Act and the regulations, enter into an agreement with the operator of a day nursery for the furnishing of day nursery services for such children as is agreed upon, and the municipality may make expenditures as are necessary for the purpose.

In our view, the Municipality's establishment of day nurseries, the purchase of nursery services from day nursery operators and the making of expenditures necessary for this purpose, are lawfully authorized activities.

The Municipality advised that in order to administer day nurseries and the purchase of service agreements, as well as determine the necessary expenditures for this purpose, an operating criteria was established. This criteria sets out municipal standards in accordance with the Day Nurseries Act and its regulations.

Collection 1:

The Municipality advised that it must determine the expenditures that are necessary for the purchase of services from day nursery operators who are a party to a purchase of service agreement. In order to do this, the day nursery operators must file a detailed budget submission. The budget submission package requires the day nursery operator to include the names of **all** day nursery staff, their positions held, and their projected salaries.

The Municipality stated that it has a responsibility to verify that any funds provided are used for the purposes intended. The Municipality stated that a significant percentage of the funding given in a purchase for service agreement is determined by salary expenditures. In accordance with the operating criteria, the total salaries for specified positions can not exceed salaries paid to the municipally operated day nurseries' staff. To ensure the claimed costs have been incurred and the identified individuals have received the appropriate compensation, employee T4 slips are compared with the budget submission.

The Municipality maintained that, therefore, the identities of all day nursery staff employed at the day care operation, the positions they held, and their projected salaries were needed to verify that the specified staff with the required qualifications or approvals held the positions and earned the projected salary as indicated in the budget submission. This would include the information about the complainant since he was the supervisor.

In our view, the Municipality had a responsibility to verify the expenditures made for its purchase of day nursery services, and that the funds were used for the purposes intended. The Municipality was also required to verify that the specified staff with the necessary qualifications or approvals were functioning in the noted positions. In order to do so, it was necessary for the Municipality to know which specifically named individuals were projected to earn those salary dollars and what their qualifications were to hold those positions. The Municipality needed to verify that the identified individuals did in fact earn the projected salaries and that these salaries did not exceed salaries paid to the municipally operated day nurseries' staff in the same positions. Therefore, it is our view that the Municipality's collection of the personal information on the budget submission was necessary for the proper administration of lawfully authorized activities, namely, the purchase of nursery services and the determination of the expenditures necessary for this purpose. Therefore, the Municipality's collection of the personal information was in accordance with section 28(2) of the Act. Given this finding, the complainant's concern that he was identifiable by virtue of being the only supervisor need not be addressed.

Collection 2:

When an individual does not have the requisite qualifications under the Day Nurseries Act to be employed in a day nursery, an application may be brought under sections 59 and 60 of Regulation 262 of the Day Nurseries Act for a provisionally trained exemption. This application must be made by the day nursery operator, on behalf of the individual, because provisionally trained exemptions are "site specific". A provisionally trained exemption allows an individual to function in a specific position where that individual has not fully completed their training.

The Municipality stated that in order to properly administer day care facilities in accordance with the Day Nurseries Act and its regulations, it must be fully satisfied that employees working in a facility in which it is engaged in a purchase of service agreement have the required qualifications or approvals. The Municipality stated that when contracting with day care providers, it shares in the liability of the facility and thus, finds it necessary to verify that an individual qualifies to be provisionally trained according to the Municipality's standards, as set out in its operating criteria.

The Municipality's application for a provisionally trained exemption required the complainant to submit supplementary documentation, as stated under issue A. This documentation was to support the application. Of the required information, the complainant provided the individual's provincial approval letter, diploma, and a transcript of courses.

The Municipality stated that it needed this supporting personal information to assess whether the individual was qualified to hold the position despite not having the requisite qualifications under the Day Nurseries Act.

In our view, the complainant's submission of the supplementary documentation supporting the individual's application for a provisionally trained exemption was necessary for the Municipality to ensure that the individual was qualified to work in the day nursery operation with which the Municipality had a purchase of service agreement. The Municipality needed to be able to satisfy itself that the individual's qualifications met its operating criteria since it ultimately shared in the liability of the facility. Therefore, in our view, the Municipality's collection of this personal information was necessary to the proper administration of a lawfully authorized activity, that being, the provision of day care services under a purchase of service agreement. The Municipality's collection of the personal information was, thus, in accordance with section 28(2) of the Act.

Conclusion: The collection of the personal information on the budget submission was in accordance with section 28(2) of the Act.

The collection of the personal information contained in the supplementary documentation for the provisionally trained exemption application was in accordance with section 28(2) of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was personal information as defined in section 2(1) of the Act.
- The collection of the personal information on the budget submission was in accordance with section 28(2) of the Act.
- The collection of the personal information contained in the supplementary documentation for the provisionally trained exemption application was in accordance with section 28(2) of the Act.

Original signed by: _____
Susan Anthistle
Compliance Review Officer

May 17, 1994

Date



CAZON

IP

-I56

INVESTIGATION REPORT

INVESTIGATION I93-083P

A COLLEGE OF APPLIED ARTS AND TECHNOLOGY



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a College of Applied Arts and Technology (the College).

The complainant had been a student in the College's nursing program. In the College's nursing division it was the practice of the professors to prepare anecdotal notes for each student. These anecdotal notes were reviewed by the students in weekly assessments with the professors, and were used in the preparation of the students' final evaluations. The complainant requested access to her anecdotal notes and was informed by the College that these notes had been destroyed.

The complainant was concerned that the College had prematurely destroyed the anecdotal notes, containing her personal information, contrary to the Freedom of Information and Protection of Privacy Act (the Act). She was also concerned about the security of the anecdotal notes, stating that the notes were kept in a binder readily accessible to all College students.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Were the anecdotal notes in the custody or under the control of the College? If yes,
- (C) Was the personal information retained by the College in accordance with section 5(1) of Regulation 460 under the Act, as amended by Regulation 532/93?
- (D) Were reasonable measures in place to prevent unauthorized access to the personal information in accordance with section 4(1) of Regulation 460 under the Act, as amended by Regulation 532/93?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name where it appears with other personal information relating to the individual...

The anecdotal notes consisted of written evaluations about the complainant made by the complainant's professor.

In our view, this information met the requirements in paragraphs (g) and (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was personal information as defined in section 2(1) of the Act.

Issue B: Were the anecdotal notes in the custody or under the control of the College?

In this case, the complainant was informed by the College that the anecdotal notes she had requested had been destroyed. However, she was also informed that the anecdotal notes were the professors' personal notes, prepared by the professors for their own use, and were, therefore, not in the custody or control of the College.

Therefore, before we address the complainant's concerns, we must determine whether the anecdotal notes were in the custody or under the control of the College, within the context of the Act. Accordingly, we have reviewed pages 10-12 of Order 120, where former Commissioner Sidney B. Linden made the following statement:

In my view, it is not possible to establish a precise definition of the words "custody" or "control" as they are used in the Act, and then simply apply those definitions in each case. Rather, it is necessary to consider all aspects of the creation, maintenance and use of particular records, and to decide whether "custody" or "control" has been established in the circumstances of a particular fact situation.

Commissioner Linden went on to provide the following non-exhaustive list of factors which can be of assistance in determining whether an institution has "custody" and/or "control" of records in particular situations:

1. Was the record created by an officer or employee of the institution?
2. What use did the creator intend to make of the record?
3. Does the institution have possession of the record, either because it has been voluntarily provided by the creator or pursuant to a mandatory statutory or employment requirement?

4. If the institution does not have possession of the record, is it being held by an officer or employee of the institution for the purposes of his or her duties as an officer or employee?
5. Does the institution have a right to possession of the record?
6. Does the content of the record relate to the institution's mandate and functions?
7. Does the institution have the authority to regulate the record's use?
8. To what extent has the record been relied upon by the institution?
9. How closely is the record integrated with other records held by the institution?
10. Does the institution have the authority to dispose of the record?

We have reviewed these factors while considering the College's position. It is our view that the anecdotal notes were in the custody and under the control of the College.

Anecdotal notes are written and retained by the professors to assist them in the preparation of the final written clinical evaluations for the students. The clinical evaluations reflect the success or failure of the student in the clinical nursing course. The College does, in fact, recognize clinical evaluations, created from the anecdotal notes, as College records, in the custody and under the control of the College.

During the weekly assessment of the students, the professors refer to the anecdotal notes and allow the student to read the notes. If a student reads the anecdotal notes, he/she may be asked to sign the notes to acknowledge that the notes have been read. When a student appeals a failing grade, the Dean of Health Sciences and Human Services may request a justification from the professor for this failing grade and the anecdotal notes may be used for this more detailed explanation of the grade assigned.

The College advised the complainant that, while in her case the anecdotal notes she requested had been destroyed, it was the current practice of the professors to retain the anecdotal notes for one year in case there was an appeal of a failing grade and after one year all anecdotal notes are destroyed.

Based upon this information, in our view, the anecdotal notes were in the custody and under the control of the College.

Conclusion: The anecdotal notes were in the custody and under the control of the College.

Issue C: Was the personal information retained by the College in accordance with section 5(1) of Regulation 460 under the Act, as amended by Regulation 532/93?

Section 5(1) of Regulation 460, as amended by Regulation 532/93, states:

Personal information that has been used by an institution shall be retained by the institution for at least one year after use unless the individual to whom the information relates consents to its earlier disposal.

On December 29, 1992, the complainant requested copies of the anecdotal notes for the March 9 to May 1, 1992 semester, from the College. She was informed on January 26, 1993, by the Dean, Health Sciences and Human Services, that the anecdotal notes for that period had been destroyed. On March 4, 1993, she made a request under the Act for access to the anecdotal notes. The College responded to the access request by saying that all anecdotal notes prepared by the complainant's professor (except those for current students) had been destroyed. The College maintained that this was not done purposely to prevent the complainant from receiving copies.

The College provided our office with a copy of a policy entitled "Retention of Records and Correspondence". This policy states that the retention of instructors' records of student grades for tests, assignments and other activities on which end-of-the-semester grades are based must be retained by instructors for the period of time specified in the policy entitled "Course Grade System for Recording Academic Standing". While the College informed the complainant that it was the current practice of the professor to retain the anecdotal notes for one year, the portion of the policy relevant to this matter states that the information must be retained for at least one semester following the semester to which the notes apply, for use in the event of appeals against the grade. The policy does not state that the notes must be retained for one year.

Since the anecdotal notes were used to prepare the complainant's final clinical evaluation, and the notes were dated from March 9 to May 1, 1992, the anecdotal notes would have last been used by the professor in May 1992. When the complainant initially wrote to the College requesting the anecdotal notes, she was informed on January 26, 1993, that the anecdotal notes had been destroyed. It is our view that, since the complainant did not consent to the notes earlier disposal, the College did not retain the anecdotal notes for the prescribed minimum period of one year after use.

In our view, the College's retention of the anecdotal notes, containing the complainant's personal information, was not in accordance with section 5(1) of Regulation 460.

Conclusion: The College's retention of the personal information was not in accordance with section 5(1) of Regulation 460, as amended by Regulation 532/93.

Issue D: Were reasonable measures in place to prevent unauthorized access to the personal information in accordance with section 4(1) of Regulation 460 under the Act, as amended by Regulation 532/93?

Section 4(1) of Regulation 460, as amended by Regulation 532/93, states that:

- (1) Every head shall ensure that reasonable measures to prevent unauthorized access to the records in his or her institution are defined, documented and put in place, taking into account the nature of the records to be protected.

The complainant questioned the security of the anecdotal notes while they were maintained by the College. She stated that the notes were kept in a binder readily accessible to all College students.

In our view, the College has a responsibility to ensure that its policies and procedures regarding the maintenance and security of the anecdotal notes adhere to the requirements set out in section 4(1) of the Regulation.

In this regard, the College has stated that anecdotal notes are not "readily accessible" to students, nor are they readily accessible to other employees of the College. Professors may keep anecdotal notes together in a binder but there is an understanding that anecdotal notes contain private and confidential information which is not accessible to anyone other than the faculty member and is shared only with the individual students. Any information that is revealed to any one student would only be his/her own.

The College informed us that there is no policy which dictates how nursing professors should maintain anecdotal notes. However, it has been communicated to faculty members at divisional meetings that they are expected to take appropriate precautions to safeguard the anecdotal notes.

It is our view that while the College may have communicated to faculty members the importance of safeguarding the anecdotal notes, any reasonable measures to prevent unauthorized access to the personal information contained in the notes have not been defined, documented and put in place as required in section 4(1) of Regulation 460.

Conclusion: Reasonable measures were not defined, documented and put in place to prevent unauthorized access to the personal information, in accordance with section 4(1) of Regulation 460, as amended by Regulation 532/93.

SUMMARY OF CONCLUSIONS

- The information in question was personal information as defined in section 2(1) of the Act.
- The anecdotal notes were in the custody and under the control of the College.

- The College's retention of the personal information was not in accordance with section 5(1) of Regulation 460, as amended by Regulation 532/93.
- Reasonable measures were not defined, documented and put in place to prevent unauthorized access to the personal information, in accordance with section 4(1) of Regulation 460, as amended by Regulation 532/93.

RECOMMENDATIONS

We recommend that:

- 1) the College amend its policy on "Course Grade System for Recording Academic Standing" to include the anecdotal notes, and to ensure that the anecdotal notes are retained in accordance with section 5(1) of Regulation 460 under the Act, as amended by Regulation 532/93.
- 2) the College ensure that measures are in place to prevent unauthorized access to the anecdotal notes and that these measures are "defined" and "documented" as required by section 4(1) of Regulation 460 under the Act, as amended by Regulation 532/93.
- 3) the College ensure that all professors are made aware of the above policy amendments and security measures when they have been implemented.

Within six months of receiving this report, the College should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendations.

Original signed by:
Susan Anthistle
Compliance Review Officer

January 6, 1994
Date



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

CAZON

IP

-I56

INVESTIGATION REPORT

INVESTIGATION I93-083P

A COLLEGE OF APPLIED ARTS AND TECHNOLOGY



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a College of Applied Arts and Technology (the College).

The complainant had been a student in the College's nursing program. In the College's nursing division it was the practice of the professors to prepare anecdotal notes for each student. These anecdotal notes were reviewed by the students in weekly assessments with the professors, and were used in the preparation of the students' final evaluations. The complainant requested access to her anecdotal notes and was informed by the College that these notes had been destroyed.

The complainant was concerned that the College had prematurely destroyed the anecdotal notes, containing her personal information, contrary to the Freedom of Information and Protection of Privacy Act (the Act). She was also concerned about the security of the anecdotal notes, stating that the notes were kept in a binder readily accessible to all College students.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Were the anecdotal notes in the custody or under the control of the College? If yes,
- (C) Was the personal information retained by the College in accordance with section 5(1) of Regulation 460 under the Act, as amended by Regulation 532/93?
- (D) Were reasonable measures in place to prevent unauthorized access to the personal information in accordance with section 4(1) of Regulation 460 under the Act, as amended by Regulation 532/93?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name where it appears with other personal information relating to the individual...

The anecdotal notes consisted of written evaluations about the complainant made by the complainant's professor.

In our view, this information met the requirements in paragraphs (g) and (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was personal information as defined in section 2(1) of the Act.

Issue B: Were the anecdotal notes in the custody or under the control of the College?

In this case, the complainant was informed by the College that the anecdotal notes she had requested had been destroyed. However, she was also informed that the anecdotal notes were the professors' personal notes, prepared by the professors for their own use, and were, therefore, not in the custody or control of the College.

Therefore, before we address the complainant's concerns, we must determine whether the anecdotal notes were in the custody or under the control of the College, within the context of the Act. Accordingly, we have reviewed pages 10-12 of Order 120, where former Commissioner Sidney B. Linden made the following statement:

In my view, it is not possible to establish a precise definition of the words "custody" or "control" as they are used in the Act, and then simply apply those definitions in each case. Rather, it is necessary to consider all aspects of the creation, maintenance and use of particular records, and to decide whether "custody" or "control" has been established in the circumstances of a particular fact situation.

Commissioner Linden went on to provide the following non-exhaustive list of factors which can be of assistance in determining whether an institution has "custody" and/or "control" of records in particular situations:

1. Was the record created by an officer or employee of the institution?
2. What use did the creator intend to make of the record?
3. Does the institution have possession of the record, either because it has been voluntarily provided by the creator or pursuant to a mandatory statutory or employment requirement?

4. If the institution does not have possession of the record, is it being held by an officer or employee of the institution for the purposes of his or her duties as an officer or employee?
5. Does the institution have a right to possession of the record?
6. Does the content of the record relate to the institution's mandate and functions?
7. Does the institution have the authority to regulate the record's use?
8. To what extent has the record been relied upon by the institution?
9. How closely is the record integrated with other records held by the institution?
10. Does the institution have the authority to dispose of the record?

We have reviewed these factors while considering the College's position. It is our view that the anecdotal notes were in the custody and under the control of the College.

Anecdotal notes are written and retained by the professors to assist them in the preparation of the final written clinical evaluations for the students. The clinical evaluations reflect the success or failure of the student in the clinical nursing course. The College does, in fact, recognize clinical evaluations, created from the anecdotal notes, as College records, in the custody and under the control of the College.

During the weekly assessment of the students, the professors refer to the anecdotal notes and allow the student to read the notes. If a student reads the anecdotal notes, he/she may be asked to sign the notes to acknowledge that the notes have been read. When a student appeals a failing grade, the Dean of Health Sciences and Human Services may request a justification from the professor for this failing grade and the anecdotal notes may be used for this more detailed explanation of the grade assigned.

The College advised the complainant that, while in her case the anecdotal notes she requested had been destroyed, it was the current practice of the professors to retain the anecdotal notes for one year in case there was an appeal of a failing grade and after one year all anecdotal notes are destroyed.

Based upon this information, in our view, the anecdotal notes were in the custody and under the control of the College.

Conclusion: The anecdotal notes were in the custody and under the control of the College.

Issue C: Was the personal information retained by the College in accordance with section 5(1) of Regulation 460 under the Act, as amended by Regulation 532/93?

Section 5(1) of Regulation 460, as amended by Regulation 532/93, states:

Personal information that has been used by an institution shall be retained by the institution for at least one year after use unless the individual to whom the information relates consents to its earlier disposal.

On December 29, 1992, the complainant requested copies of the anecdotal notes for the March 9 to May 1, 1992 semester, from the College. She was informed on January 26, 1993, by the Dean, Health Sciences and Human Services, that the anecdotal notes for that period had been destroyed. On March 4, 1993, she made a request under the Act for access to the anecdotal notes. The College responded to the access request by saying that all anecdotal notes prepared by the complainant's professor (except those for current students) had been destroyed. The College maintained that this was not done purposely to prevent the complainant from receiving copies.

The College provided our office with a copy of a policy entitled "Retention of Records and Correspondence". This policy states that the retention of instructors' records of student grades for tests, assignments and other activities on which end-of-the-semester grades are based must be retained by instructors for the period of time specified in the policy entitled "Course Grade System for Recording Academic Standing". While the College informed the complainant that it was the current practice of the professor to retain the anecdotal notes for one year, the portion of the policy relevant to this matter states that the information must be retained for at least one semester following the semester to which the notes apply, for use in the event of appeals against the grade. The policy does not state that the notes must be retained for one year.

Since the anecdotal notes were used to prepare the complainant's final clinical evaluation, and the notes were dated from March 9 to May 1, 1992, the anecdotal notes would have last been used by the professor in May 1992. When the complainant initially wrote to the College requesting the anecdotal notes, she was informed on January 26, 1993, that the anecdotal notes had been destroyed. It is our view that, since the complainant did not consent to the notes earlier disposal, the College did not retain the anecdotal notes for the prescribed minimum period of one year after use.

In our view, the College's retention of the anecdotal notes, containing the complainant's personal information, was not in accordance with section 5(1) of Regulation 460.

Conclusion: The College's retention of the personal information was not in accordance with section 5(1) of Regulation 460, as amended by Regulation 532/93.

Issue D: Were reasonable measures in place to prevent unauthorized access to the personal information in accordance with section 4(1) of Regulation 460 under the Act, as amended by Regulation 532/93?

Section 4(1) of Regulation 460, as amended by Regulation 532/93, states that:

- (1) Every head shall ensure that reasonable measures to prevent unauthorized access to the records in his or her institution are defined, documented and put in place, taking into account the nature of the records to be protected.

The complainant questioned the security of the anecdotal notes while they were maintained by the College. She stated that the notes were kept in a binder readily accessible to all College students.

In our view, the College has a responsibility to ensure that its policies and procedures regarding the maintenance and security of the anecdotal notes adhere to the requirements set out in section 4(1) of the Regulation.

In this regard, the College has stated that anecdotal notes are not "readily accessible" to students, nor are they readily accessible to other employees of the College. Professors may keep anecdotal notes together in a binder but there is an understanding that anecdotal notes contain private and confidential information which is not accessible to anyone other than the faculty member and is shared only with the individual students. Any information that is revealed to any one student would only be his/her own.

The College informed us that there is no policy which dictates how nursing professors should maintain anecdotal notes. However, it has been communicated to faculty members at divisional meetings that they are expected to take appropriate precautions to safeguard the anecdotal notes.

It is our view that while the College may have communicated to faculty members the importance of safeguarding the anecdotal notes, any reasonable measures to prevent unauthorized access to the personal information contained in the notes have not been defined, documented and put in place as required in section 4(1) of Regulation 460.

Conclusion: Reasonable measures were not defined, documented and put in place to prevent unauthorized access to the personal information, in accordance with section 4(1) of Regulation 460, as amended by Regulation 532/93.

SUMMARY OF CONCLUSIONS

- The information in question was personal information as defined in section 2(1) of the Act.
- The anecdotal notes were in the custody and under the control of the College.

- The College's retention of the personal information was not in accordance with section 5(1) of Regulation 460, as amended by Regulation 532/93.
- Reasonable measures were not defined, documented and put in place to prevent unauthorized access to the personal information, in accordance with section 4(1) of Regulation 460, as amended by Regulation 532/93.

RECOMMENDATIONS

We recommend that:

- 1) the College amend its policy on "Course Grade System for Recording Academic Standing" to include the anecdotal notes, and to ensure that the anecdotal notes are retained in accordance with section 5(1) of Regulation 460 under the Act, as amended by Regulation 532/93.
- 2) the College ensure that measures are in place to prevent unauthorized access to the anecdotal notes and that these measures are "defined" and "documented" as required by section 4(1) of Regulation 460 under the Act, as amended by Regulation 532/93.
- 3) the College ensure that all professors are made aware of the above policy amendments and security measures when they have been implemented.

Within six months of receiving this report, the College should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendations.

Original signed by:
Susan Anthistle
Compliance Review Officer

January 6, 1994
Date



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

Case
File

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INVESTIGATION REPORT

INVESTIGATION I93-084P

ONTARIO HUMAN RIGHTS COMMISSION



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ontario Human Rights Commission (the OHRC).

The OHRC was conducting an investigation into a complaint against a named library (the Library) filed by an employee of the Library. During the course of the OHRC investigation, the complainant, also an employee of the Library, was asked by the OHRC for her racial background. When she refused, she was advised by the OHRC that the information in question was already contained in its records.

The complainant was concerned that the OHRC's collection of personal information was contrary to the Freedom of Information and Protection of Privacy Act (the Act). She was also concerned that the OHRC had collected her personal information indirectly, contrary to section 39(1) of the Act.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Was the OHRC's collection of the personal information in accordance with section 38(2) of the Act?
- (C) Was section 39(1) of the Act applicable?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act states in part:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

The information in question was about the racial backgrounds of the complainant and the other Library employees.

In our view, this information met the requirements in paragraph (a) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was personal information as defined in section 2(1) of the Act.

Issue B: Was the OHRC's collection of the personal information in accordance with section 38(2) of the Act?

Section 38(2) of the Act sets out the conditions under which personal information may be collected on behalf of an institution. This section states:

(2) No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, **used for the purposes of law enforcement** or necessary to the proper administration of a lawfully authorized activity. (emphasis added)

The OHRC has stated that its collection of the racial background information involved all of the employees of the Library in the immediate work area of the employee who had filed the OHRC complaint, including the complainant. The OHRC advised us that the racial background information was collected from the Library employees to be used for the purposes of law enforcement. The OHRC has relied on previous Orders issued by this Office. In Order 200, then Assistant Commissioner Tom Wright stated:

Both Commissioner Sidney B. Linden and I have found that investigations into complaints made under the Human Rights Code, 1981, S.O. 1981 c. 53 (the "Code") are properly considered law enforcement matters and that these investigations may lead to proceedings before a Board of Inquiry under the Code, which are properly considered law enforcement proceedings. [See Order 89 (Appeal Number 890024), dated September 7, 1989 and Order 178 (Appeal Number 890112), dated June 12, 1990.]

The OHRC complaint involved an alleged contravention of section 5(1) of the Ontario Human Rights Code R.S.O. 1990. This section states, in part, that "Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour...". The OHRC advised us that the OHRC complaint against the Library specifically related to discrimination because of race and colour. As part of the investigation, the complainant, as well as the other employees of the Library in the immediate work area of the employee who filed the OHRC complaint, were asked for their racial backgrounds. In the complainant's case, she refused to provide her racial background to the OHRC.

However, the OHRC's collection of the other employees' racial background information was for the purpose of pursuing the investigation of the complaint under the Code. Since we have found that investigations into complaints made under the Code are considered law enforcement matters, it is our view, therefore, that the OHRC's collection of this personal information was used for the purposes of law enforcement, in accordance with section 38(2) of the Act.

Conclusion: The OHRC's collection of personal information was in accordance with section 38(2) of the Act.

Issue C: Was section 39(1) of the Act applicable?

Section 39(1) of the Act provides that personal information shall only be collected by an institution directly from the individual to whom the information relates unless certain circumstances apply. (See Appendix A for full text).

The complainant was concerned that the OHRC had indirectly collected information about her racial background contrary to the provisions of section 39(1). She informed us that when she had refused to provide this information, the OHRC investigating officer had stated that the OHRC already had her racial background, and that he was attempting to confirm that this information was correct.

The OHRC advised that the investigating officer, who had been assigned the task of collecting the personal information, may have misunderstood the instructions given to him. Both the investigating officer and his supervisor assured our office that the OHRC had no information in its records regarding the complainant's racial background. According to the OHRC, the complainant had been falsely advised by the investigating officer that the OHRC already had her personal information. The OHRC informed us that it was sending a letter to the complainant, explaining the matter. The complainant was advised of this and was satisfied that the OHRC did not have information about her racial background in its records.

Since there was no indirect collection of the complainant's racial background, section 39(1) of the Act did not apply.

Conclusion: The OHRC did not indirectly collect information about the complainant's racial background, therefore, section 39(1) of the Act did not apply to this personal information.

SUMMARY OF CONCLUSIONS

- The information in question was personal information as defined in section 2(1) of the Act.

- The OHRC's collection of personal information was in accordance with section 38(2) of the Act.
- The OHRC did not indirectly collect information about the complainant's racial background, therefore, section 39(1) of the Act did not apply to this personal information.

Original signed by:
Susan Anthistle
Compliance Review Officer

February 16, 1994
Date

APPENDIX A

39.-(1) Personal information shall only be collected by an institution directly from the individual to whom the information relates unless,

- (a) the individual authorizes another manner of collection;
- (b) the personal information may be disclosed to the institution concerned under section 42 or under section 32 of the Municipal Freedom of Information and Protection of Privacy Act, 1989;
- (c) the Commissioner has authorized the manner of collection under clause 59(c);
- (d) the information is in a report from a reporting agency in accordance with the Consumer Reporting Act;
- (e) the information is collected for the purpose of determining suitability for an honour or award to recognize outstanding achievement or distinguished service;
- (f) the information is collected for the purpose of the conduct of a proceeding or a possible proceeding before a court or judicial or quasi-judicial tribunal;
- (g) the information is collected for the purpose of law enforcement; or
- (h) another manner of collection is authorized by or under a statute.



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Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

INVESTIGATION REPORT

INVESTIGATION I93-119P

MINISTRY OF TRANSPORTATION



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of Transportation (the Ministry). The complainant had applied to renew his driving licence at a Ministry of Transportation licensing office administered by a private issuer. Private issuers are under contract to the Ministry to issue driver licences and motor vehicle permits under subsection 7(11) of the Highway Traffic Act.

The complainant wished to pay for his licence by cheque. The private issuer requested the complainant's telephone number, as a condition for acceptance of his cheque. The complainant stated that his cheque was eventually accepted, without the collection of his telephone number. However, the complainant obtained from the Ministry a copy of their policy on cheque acceptance. He objected to the statement "Issuers may accept cheques at their discretion, but must follow Ministry policy if they do so." The complainant's concern was that in his view, this statement allowed private issuers unlimited discretion to collect any type of personal information from driver licence applicants, in contravention of the Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Did the private issuer collect the personal information on behalf of the Ministry in accordance with section 38(2) of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information", in part as:

recorded information about an identifiable individual, including,

- (d) the address, **telephone number**, fingerprints or blood type of the individual, (emphasis added)

It is our view that the complainant's telephone number met the requirements of paragraph (d) of the definition of "personal information" in section 2(1) of the Act.

Conclusion: The complainant's telephone number was personal information as defined in section 2(1) of the Act.

Issue B: Did the private issuer collect the personal information on behalf of the Ministry in accordance with section 38(2) of the Act?

In order to determine if private issuers are governed by the Act, either as "institutions" under the Act or as "agents" of the Ministry, we reviewed a copy of the Memorandum of Agreement which is a contract between the Minister of Transportation and private issuers. Under Paragraph 1 of the Memorandum, the Minister appoints the issuer to be an agent of the Minister to issue motor vehicle permits. Under paragraph 1 of the Addendum to the Memorandum, the issuer is appointed to issue driver licences.

Paragraph 2 of the Memorandum states that the issuer will comply with all legislation governing the issuance of permits and licences; with the Ministry's manuals, policies, instructions and directives, and with the Ministry's reporting requirements in a manner that allows immediate revenue reconciliation. Paragraph 13 states, in part, that the issuer will not engage in any activity or business in which the issuer's interests will conflict with the interests of the Ministry, and paragraph 2 of the Addendum states that the issuer shall comply with all legislation and regulations governing the issuance of drivers' licences as set out in the policies, procedures and directives published from time to time by or under the authority of the Minister.

It is our view that, therefore, private issuers may be considered to be agents of the Ministry for the purposes of the Act, as it relates to the collection of personal information for the purposes of issuing driver licences and motor vehicle permits.

Section 38(2) of the Act states:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or **necessary to the proper administration of a lawfully authorized activity**. (emphasis added)

Under Ministry policy, private issuers may accept cheques at their discretion, provided that they follow the criteria for accepting cheques. An acceptable cheque must include the signature of the account owner (or authorized person), bank name, branch and account number. It must be

legible, made payable to the Minister of Finance etc. The Ministry's policy does not state that an acceptable cheque must also have the telephone number of the applicant.

The complainant advised that subsequent to conversations with Ministry staff, and with individuals at the private issuer's licensing office, he was able to pay for his licence by cheque, without having to provide his telephone number. The complainant, however, was of the view that the collection of personal information for acceptance of cheques should be restricted to only the information essential to the renewal of the licence. He felt that the Ministry's policy on the acceptance of cheques should be revised so that private issuers could not request telephone numbers, or other such personal data.

The Ministry was of the opinion that private issuers, as small business operators, should be allowed flexibility in the conduct of their business, and that the revision of the policy to define precisely what information may be collected, as suggested by the complainant, would be too intrusive. Nevertheless, the Ministry stated that they had no intent or desire to collect telephone numbers from driver licence applicants, and that it was not a common practice to do so.

In our view, the issuance of drivers' licences and motor vehicle permits by private issuers on behalf of the Ministry is a lawfully authorized activity. It is also our view that the collection of personal information for the acceptance of a cheque such as the signature of the account owner, the name of his/her bank, branch and account number, is necessary to the process of issuing a driver's licence or a motor vehicle permit. The collection of this information is, therefore, in accordance with section 38(2) of the Act. However, it is our view that the collection of the telephone number is not necessary to the issuance of a licence or a permit. In this case, the private issuer, on behalf of the Ministry, did not collect the complainant's telephone number for cheque acceptance. If the private issuer had done so, the collection of this personal information would not have been in accordance with section 38(2) of the Act.

Conclusion: If the private issuer had collected, on behalf of the Ministry, the complainant's telephone number for cheque acceptance, the collection of this personal information would not have been in accordance with section 38(2) of the Act.

SUMMARY OF CONCLUSIONS

- The complainant's telephone number was personal information as defined in section 2(1) of the Act.
- If the private issuer had collected, on behalf of the Ministry, the complainant's telephone number for cheque acceptance, the collection of this information would not have been in accordance with section 38(2) of the Act.

RECOMMENDATIONS

During the course of this investigation, the Ministry offered to send an electronic bulletin to all private issuers, stressing that the only criteria for accepting cheques were those listed in the policy. In our view, this action would minimize the likelihood of future requests by private issuers for applicants' telephone numbers. The Ministry also offered to send a paper copy of the bulletin to the complainant.

We, therefore, recommend that the Ministry:

1. Implement its proposal to issue an electronic bulletin to all private issuers, stressing that the only criteria for accepting cheques are those listed in the Ministry's cheque acceptance policy and to send a paper copy to the complainant. The electronic bulletin should include a reference to section 38(2) of the Act.
2. Send a copy of this report to the private issuer who requested the complainant's telephone number.

Within six months of receiving this report, the Ministry should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendations.

Susan Anthistle
Compliance Review Officer

Date



Information and Privacy
Commissioner/Ontario
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et à la protection de la vie privée/Ontario

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INVESTIGATION REPORT

INVESTIGATION I94-001M

A SEPARATE SCHOOL BOARD

September 14, 1994



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a named separate school board (the Board).

The complainant, a teacher with the Board, said that after an incident at the school, she went on sick leave. While on sick leave, the Board sent her two forms for her signature. One form (form A) required the complainant to authorize the collection of her medical information from her own physician, including "any and all medical information, documents, records or history" which might be required by the Board's physician. The other form (form B) authorized the Board's physician to disclose his report based on his medical examination of the complainant to the Board's Superintendent of Education, Personnel Services (Superintendent) or to her designate, the Assistant Superintendent. The Board advised the complainant that these were standard consent forms.

The complainant was reluctant to sign the consent forms which she considered to be invasive and in contravention of the Municipal Freedom of Information and Protection of Privacy Act (the Act). However, she received a letter from the Superintendent stating that she could not return to work until the Board's physician had received the completed consent forms and had sent his report to the Board (i.e., to the Assistant Superintendent).

The complainant signed form B but revised form A, narrowing it to make it specific to the medical information related to the incident which had precipitated her sick leave. The Board accepted the complainant's revised form (form C). The complainant stated that she had signed forms B and C, thereby giving her consent to the collection and disclosure of her medical information, only "under coercion" -- in order that she could return to work.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Was the Board's proposed collection of personal information through form A in compliance with section 28(2) of the Act?
- (C) Was the Board's collection of personal information through form C in compliance with section 28(2) of the Act?
- (D) Was the Board's indirect collection of personal information in compliance with section 29(1) of the Act?

- (E) Was the disclosure of personal information by the Board's physician to the Assistant Superintendent in compliance with section 32 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information", in part, as:

recorded information about an identifiable individual, including,

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The medical report completed by the Board's physician contained the complainant's name and a description of her physical and emotional state, as well as the physician's opinion that she was physically able to return to her teaching duties.

In our view, the personal information in the medical report met the requirements of paragraphs (g) and (h) of the definition of "personal information" in section 2(1) of the Act.

The information obtained by the Board through form C was medical information relating to the specific incident which resulted in the complainant's leave of absence. This information met the requirements of paragraph (h) of the definition of "personal information" in section 2(1) of the Act.

The information that the Board had intended to obtain through form A was "any and all medical information, documents, records of history" in the possession of the complainant's doctor relating to the complainant, as required by the Board's physician for the purpose of completing his examination and writing his report. It is our view that this information would have met the requirements of paragraphs (b), (g), and (h) of the definition of "personal information" in section 2(1) of the Act.

Conclusion: The information in question was "personal information" as defined in section 2(1) of the Act.

Issue B: Was the Board's proposed collection of personal information through form A in compliance with section 28(2) of the Act?

While no personal information was actually collected through form A, the Board nonetheless intended (and normally collected) personal information using this form. In asking the complainant to sign it, the Board was seeking her consent to collect "any and all medical information, documents, records or history" relating to her as required by the Board's physician. Therefore, we examined whether the Board's intended collection of the complainant's personal information through form A would have been in compliance with section 28(2) of the Act.

Section 28(2) of the Act states:

(2) No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or **necessary to the proper administration of a lawfully authorized activity**. (emphasis added)

The Board cited section 171(1) of the Education Act, which states in part that a Board may:

appoint and remove such teachers, as it considers expedient, determine the terms on which such officers, servants and teachers are to be employed, prescribe their duties and fix their salaries.

The Board advised that it administered and funded employee sick leave benefits. The Board stated that its collection of the complainant's medical information was necessary to the proper administration of a lawfully authorized activity, i.e. the administration of these employee benefits. It is our view that the Board's administration of employee benefits as part of its management of human resources was a lawfully authorized activity.

However, it is also our view that the extremely broad wording contained in form A could have led to the collection of medical information that would not have been specifically related to the incident precipitating the complainant's sick leave, and for which sick benefits were being received. In this particular case, the Board accepted a narrower, more privacy-protective version of form A (form C) from the complainant, which only collected information related to the precipitating incident. The Board considered this to be sufficient. Had the Board collected all the personal information set out in form A, some of which would not have been specifically related to the precipitating incident, we do not believe the Board's collection would have been restricted to what was truly "necessary" to the proper administration of a lawfully authorized activity. Accordingly, the collection of the broad spectrum of medical information required through form A ("**any and all** medical information, documents, records or history") would not have been in compliance with section 28(2) of the Act.

Conclusion: The Board's proposed collection of the complainant's personal information through form A would not have been in compliance with section 28(2) of the Act.

Issue C: Was the Board's collection of personal information through form C in compliance with section 28(2) of the Act?

The Board collected the complainant's medical information through her revised form C. This information was related to the incident which had directly resulted in her leave of absence.

As previously stated, it is our view that the Board's administration of employee benefits as part of its management of human resources was a lawfully authorized activity. It is also our view that the collection of medical information relating to the incident which precipitated the complainant's sick leave was necessary to the proper administration of this lawfully authorized activity, in order to determine the appropriate benefits. Therefore, the Board's collection of the complainant's personal information through form C was in compliance with section 28(2) of the Act.

Conclusion: The Board's collection of the complainant's personal information through form C was in compliance with section 28(2) of the Act.

Issue D: Was the Board's indirect collection of personal information in compliance with section 29(1) of the Act?

Section 29(1)(a) of the Act states:

An institution shall collect personal information only directly from the individual to whom the information relates unless,

- (a) the individual authorizes another manner of collection.

The complainant said that she had not wanted to sign the consent forms but felt she had been given no choice: she said she signed the consent forms "under coercion". She had been informed in the letter from the Board's Superintendent that she could not return to work unless the forms were signed. The Board also confirmed that employees were required to sign the forms before receiving or continuing to receive sick leave benefits, or being permitted to return to work.

For the purpose of comparison, we contacted another separate school board to determine if its policies regarding the collection of employee medical information were the same. We were told that for short term illness, employees may be asked to obtain a medical certificate from their doctor. For long term illness, "an extended sick leave claim" form and an attending physician's statement are sent to the employee. Both forms require administrative details, but with a minimum of medical information. The attending physician's statement requires the attending physician to complete the statement and give it directly to the patient. The patient then returns both the sick leave claim form and the physician's statement to the school board.

It is our view that had the complainant been allowed to obtain the required medical information directly from her doctor to pass on to the Board, she would have been in a better position to

protect her privacy, with no detriment to the fulfilment of the Board's legitimate need for this information. She would have had the opportunity to discuss the need for any medical information unrelated to the precipitating incident, with her own physician prior to forwarding the report to the Board.

For consent to be truly meaningful, that consent must be given on an informed basis and must be given voluntarily. This is the hallmark of consent -- that it be voluntary in nature. If consent is not both informed and voluntary, its value is diminished so greatly that, in our view, it may be rendered meaningless.

In the circumstances of this particular case, the complainant signed Form C, a narrowed version of Form A, which the complainant had refused to sign in its entirety. The complainant herself revised Form A (presumably, to her satisfaction), transforming it into Form C. By signing Form C, however, the complainant in effect authorized the Board's indirect collection of her medical information from her physician. Under the pressured circumstances faced by the complainant, we question just how "voluntarily" consent was actually given. However, the signed Form C enabled the Board to collect the complainant's personal information, in technical compliance with section 29(1)(a), i.e., where the individual authorizes another manner of collection. Nonetheless, we find this approach to obtaining authorization to be objectionable, and not in keeping with the spirit of the Act.

Conclusion: The Board's indirect collection of the complainant's personal information was in technical compliance with section 29(1) of the Act.

Issue E: Was the disclosure of personal information by the Board's physician to the Assistant Superintendent, in compliance with section 32 of the Act?

Under the Act, an institution may not disclose information in its custody or under its control except in the specific circumstances outlined in section 32.

Section 32(c) of the Act states:

An institution shall not disclose personal information in its custody or under its control except,

- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;

The Board stated that one of the terms of employment with the Board requires a teacher to be examined by a Board physician at any time before an allowance for sick leave or benefits are given. The Board advised that section 23.04(c) of the Collective Agreement between the teachers' union and the Board stated:

The Board may require the teacher to be examined by a medical or dental

practitioner of the Board's own choice at any time before any allowance for sick leave is given or while benefits from the plan are being received.

The complainant was examined by the Board's physician, whose report was then disclosed to the Assistant Superintendent.

It is our view that one of the purposes for which the Board's physician had obtained the complainant's medical information (contained in his report) was to determine whether the complainant was physically and mentally ready to return to work, or whether she should remain on sick leave and in receipt of benefits. The Board's physician then disclosed his report to the Assistant Superintendent to inform her that in his view, the complainant was ready to return to work. Since the Board's physician disclosed the complainant's medical information for the same purpose for which he had obtained it, we view his disclosure as being in compliance with section 32(c) of the Act.

Conclusion: The disclosure of the complainant's personal information by the Board's physician to the Assistant Superintendent was in compliance with section 32 of the Act.

Other Matters

Access and Retention of Personal Information

During the course of our investigation, the complainant also raised several concerns about who would have access to her official personnel file and how long the medical report would be retained in the file.

The Board provided us with the following information:

Access to Personnel Files:

Staff who have access to personnel files include the Superintendent of Education, Personnel Services; the Assistant Superintendent of Education, Personnel Services; personnel staff who deal with the specific category of employee in question; the appropriate support staff in Personnel, i.e. Personnel Records Officer, Secretary to the Superintendent; and upon request, the Superintendent of Education, Schools, who is responsible for the school in which the teacher is assigned.

Section 4(2) of Regulation 823 under the Act provides that "Every head shall ensure that only those individuals who need a record for the performance of their duties shall have access to it."

It is our view that the above personnel may require access to the complainant's personnel file from time to time, for the performance of their duties. In particular, those staff who were involved in the administration of her medical benefits would need access to the medical report

in her file. However, we would ask the Board to ensure that only those individuals who specifically need to access an employee's medical information, be permitted to do so.

Retention of Personal Information:

Employee records are retained permanently on microfilm. Employees' active hard copy files, including medical records or consent forms, are retained in Personnel Services until their employment with the Board terminates. The Board sent us a copy of their retention schedule.

Section 5 of Regulation 823 states that personal information that has been used by an institution "shall be retained by the institution for the shorter of one year after use or the period set out in a by-law or resolution made by the institution or made by another institution affecting the institution, unless the individual to whom the information relates consents to its earlier disposal".

While the Regulation provides for a minimum retention period, there are no restrictions on the **length** of retention periods. Therefore, the Board's retention of an employee's records until the termination of his/her employment would not be an infringement of this Regulation.

SUMMARY OF CONCLUSIONS

- The information in question was "personal information" as defined in section 2(1) of the Act.
- The Board's proposed collection of the complainant's personal information through form A would not have been in compliance with section 28(2) of the Act.
- The Board's collection of the complainant's personal information through form C was in compliance with section 28(2) of the Act.
- The Board's indirect collection of the complainant's personal information was in technical compliance with section 29(1) of the Act.
- The disclosure of the complainant's personal information by the Board's physician to the Assistant Superintendent was in compliance with section 32 of the Act.

RECOMMENDATIONS

We believe that the Board could have better protected the complainant's privacy if: a) the complainant had been allowed to collect the medical information **directly** from her physician and submit it to the Board's physician herself; and b) if she had been allowed to review and comment upon the Board's physician's report before it was sent to the Assistant Superintendent.

The complainant would have thus been able to object to the disclosure of any medical information she felt was not relevant under the circumstances.

Therefore, we recommend that the Board amend its policies and procedures as follows:

1. The Board's physician should not collect medical information directly from an employee's physician. The employee involved should be permitted to obtain the medical information from his/her own physician, to submit directly to the Board's physician. (This would also eliminate the need for a consent form for this collection).
2. The Board should allow the employee involved to review and comment on the Board's physician's medical report, prior to sending it to Personnel Services.

Within six months of receiving this report, the Board should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendations.

Original signed by:
Ann Cavoukian, Ph.D.
Assistant Commissioner

September 14, 1994
Date



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Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

INVESTIGATION REPORT

INVESTIGATION I94-005M

A POLICE SERVICES BOARD



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INTRODUCTION

Background of the Complaint

A police chief (the complainant) wrote that his employer, a named police services board (the Board), had disclosed his personal information contrary to the provisions of the Municipal Freedom of Information and Protection of Privacy Act (the Act). He complained that the Board had faxed his September 1993 performance evaluation (the evaluation) to its solicitor. Subsequently, the Board's solicitor sent the complainant's lawyer a copy of this evaluation. The lawyer then sent the complainant a copy.

The complainant stated that the Board had also wrongfully disclosed the evaluation to clerical staff who were involved in faxing/sending the evaluation to the solicitor, to the lawyer, and to himself.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Was the disclosure of the personal information in accordance with section 32 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act states in part:

"personal information" means recorded information about an identifiable individual, including,

...

- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name if it appears with other personal

information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

We have reviewed a copy of the evaluation in question. The evaluation contained the complainant's name together with the views and opinions of the Board relating to his job performance such as his management skills. It also included statements attributed to him.

In our view, the information contained in the evaluation satisfied the requirements of the definition of personal information in paragraphs (g), and (h) of section 2(1) of the Act.

Conclusion: The information in question was "personal information" as defined in section 2(1) of the Act.

Issue B: Was the disclosure of the "personal information" in accordance with section 32 of the Act?

Under the Act, an institution shall not disclose personal information in its custody or under its control except in the specific circumstances outlined in section 32 (see Appendix A for full text).

The Board's Disclosure to its Solicitor

The Board stated that it had relied on sections 31(b), 32(c), and 32(d) of the Act for this disclosure. In our view, section 32(c) was applicable. It states:

An institution shall not disclose personal information in its custody or under its control except,

...

(c) for the purpose for which it was obtained or compiled or for a consistent purpose;

...

Section 33 of the Act further provides that:

The purpose of a use or disclosure of personal information that has been collected directly from the individual to whom the information relates is a consistent purpose under clauses 31(b) and 32(c) only if the individual might reasonably have expected such a use or disclosure.

However, where personal information has been collected **indirectly** from an individual (as in this

case), a consistent purpose would be one that was "reasonable compatible" with the purpose for which the personal information had been obtained or compiled.

The Board stated that it had compiled the evaluation in question, and other personnel and performance reviews about the complainant to fulfil its mandate, as set out in section 31 of the Police Services Act (the PSA). In particular, the Board had relied on sections 31(c), (d), and (e) of the PSA which state:

A board is responsible for the provision of police services and for law enforcement and crime prevention in the municipality and shall,

...

- (c) establish policies for the effective management of the police force;
- (d) recruit and appoint the chief of police and any deputy chief of police, and annually determine their remuneration and working conditions, taking their submissions into account;
- (e) direct the chief of police and monitor his or her performance;

...

The Board stated that it had retained its solicitor to advise it in connection with the administration of police services. In order to fully instruct its solicitor so that he could provide the Board with advice, it was necessary for the Board to give its solicitor information regarding the operation of the police force and the complainant who was its chief of police.

The Board further advised that on August 17, 1993, the Board had passed the following resolution:

Be it resolved that Mr. [name of solicitor], the solicitor for the Police Services Board be authorized to contact the Solicitor General to request that the Ontario Police Commission hold a hearing to enquire into the performance of [name of complainant] as Chief of Police.

On August 19, 1993, the solicitor wrote such a letter to the Ministry of the Solicitor General and Correctional Services (the Ministry) outlining the matters that the Board would be raising concerning the complainant's performance. In order for the solicitor to do so, it was necessary for the Board to disclose the complainant's personal information to him.

The Board originally compiled the complainant's personal information in the evaluation in order to fulfil its mandate under section 31 of the PSA. In our view, the Board's subsequent disclosure of the complainant's personal information to its solicitor so that he could advise and assist the Board in fulfilling its mandate was for a purpose which was "reasonably compatible" with the purpose for which the personal information had been compiled. Therefore, in our view,

the Board's disclosure of the complainant's personal information in the evaluation was for a consistent purpose and was, therefore, in accordance with section 32(c) of the Act.

The Board's Disclosure to a Clerical staff member

The evaluation had been signed by three members of the Board (and the complainant).

The complainant believed that the evaluation had been disclosed to a clerical employee who in turn had faxed it to the Board's solicitor. However, the Board's solicitor stated that one of the members who had signed the evaluation had faxed it to him. We found no evidence that the Board had disclosed the evaluation to any staff members.

The Board's Solicitor's Disclosure to the Complainant's Lawyer

The complainant stated that the evaluation had also been disclosed to the solicitor's secretary, the complainant's own lawyer, and his lawyer's secretary who in turn had sent him a copy. We have not examined the actions of the complainant's lawyer or his secretary since neither had been retained or were employed by the Board.

With respect to the Board's solicitor's disclosure to the complainant's lawyer, the Board advised that the complainant's lawyer had contacted the solicitor and had informed him that he was representing the complainant. The Board's solicitor (through his secretary) had then sent the complainant's lawyer a copy of the evaluation and the Board's letter to the Ministry as part of the full disclosure of the Board's concerns with respect to the complainant's performance.

As previously stated, the Board had compiled the complainant's personal information in the evaluation to fulfil its mandate under the PSA. In our view, the disclosure by the Board's solicitor to the complainant's lawyer was for a purpose that was reasonably compatible with the purpose for which the personal information had been compiled. This disclosure was, therefore, for a consistent purpose, in accordance with section 32(c) of the Act.

Conclusion: The Board's disclosure of the complainant's personal information to its solicitor was in accordance with section 32(c) of the Act.

We found no evidence that the Board had disclosed the evaluation to any staff members.

The Board's solicitor's disclosure to the complainant's lawyer was in accordance with section 32(c) of the Act.

Other Matters

During the course of this investigation, the following matter was identified which should be brought to the institution's attention.

While this complaint did not concern the improper disclosure of personal information by facsimile, we noticed that the Board had used a facsimile machine to transmit sensitive personal information. We reminded the Board of our faxing guidelines and enclosed, with our draft report, a copy of the following documents: "Guidelines on Facsimile Transmission Security, June 1989" and "Update on 1989 Guidelines on Facsimile Transmission Security, June 1990".

SUMMARY OF CONCLUSIONS

- The information in question was "personal information" as defined in section 2(1) of the Act.
- The Board's disclosure of the complainant's personal information to its solicitor was in accordance with section 32(c) of the Act.
- We found no evidence that the Board had disclosed the evaluation to any staff members.
- The Board's solicitor's disclosure to the complainant's lawyer was in accordance with section 32(c) of the Act.

Original signed by: _____
Susan Anthistle
Compliance Review Officer

May 17, 1994
Date

APPENDIX A

32. An institution shall not disclose personal information in its custody or under its control except,
- (a) in accordance with Part I;
 - (b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;
 - (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
 - (d) if the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and if the disclosure is necessary and proper in the discharge of the institution's functions;
 - (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or treaty;
 - (f) if disclosure is by a law enforcement institution,
 - (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
 - (ii) to another law enforcement agency in Canada;
 - (g) if disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
 - (h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification is mailed to the last known address of the individual to whom the information relates;
 - (i) in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased;
 - (j) to the Minister

- (k) to the Information and Privacy Commissioner;
- (l) to the Government of Canada of the Government of Ontario in order to facilitate the auditing of shared cost programs.



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Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

INVESTIGATION REPORT

INVESTIGATION I94-005P

A COMMUNITY COLLEGE



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a community college (the College).

The complainant, an employee of the College, was concerned about the collection and retention of records containing personal information about his job performance at the College, including a petition signed by co-workers, two cautionary letters from the employer, and a psychiatric report.

The complainant advised that a clause in the collective agreement between the College and the union provided for removal of personal records after one year, however, his records had been retained on file for over two years, and the College would not agree to dispose of them.

The complainant was of the view that the College's collection and retention of his records was in contravention of the Freedom of Information and Protection of Privacy Act (the Act). Further, the complainant felt that the records were false and misleading, with groundless accusations about his job performance and attitude.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information contained in the records "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Did the College collect the personal information in the records in accordance with section 38(2) of the Act?
- (C) Did the College retain the personal information in the records in accordance with section 40(1) of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information contained in the records "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (g) the views or opinions of another individual about the individual,
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

We reviewed the records at issue. They included a petition signed by co-workers alleging hostile and threatening behaviour, two cautionary letters from the College, and a psychiatric report. The records contained the complainant's name, information about the complainant's work and marital situation, his age, the views of the complainant's co-workers about him, and personal information about the complainant's employment, psychological and educational history.

It is our view that the information contained in the records met the requirements of paragraphs (a), (b), (g) and (h) of the definition of "personal information" in section 2(1) of the Act.

Conclusion: The information contained in the records was personal information as defined in section 2(1) of the Act.

Issue B: Did the College collect the personal information in the records in accordance with section 38(2) of the Act?

The complainant was of the opinion that the College had been harassing him by collecting his personal records. He felt that the College had been trying to "shoot the messenger" rather than deal with broader problems within his department.

Section 38(2) of the Act states:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or **necessary to the proper administration of a lawfully authorized activity**. (emphasis added)

The College stated that its collection of the complainant's personal information in the records was necessary to the proper administration of a lawfully authorized activity.

The College advised that it had provided a standard notice of collection to the complainant when he became a permanent employee. The written notice had informed him that a personnel file containing personal information collected directly from him, or indirectly about him, on matters such as "employment history, salary, performance and attendance, had been initiated under the authority of the Ministry of Colleges and Universities Act R.S.O. 1980, c.272, s.5; R.R.O. 1980, Reg 640 for the purpose of various human resources planning and reporting activities...". (Now, R.S.O. 1990, c.M.19 s.5 and 1990, Reg 770).

Section 5(1) of the Ministry of Colleges and Universities Act states:

Subject to the approval of the Lieutenant Governor in Council, the Ministry may establish, name, maintain, conduct and govern colleges of applied arts and technology that offer programs of instruction in one or more fields of vocational, technological, general and recreational education and training, in day or evening courses and for full-time or part-time students.

Section 5(1) of Regulation 770 states, in part, that a Board of Governors has "the power to appoint, classify, promote, suspend, transfer, reclassify or remove...administrative, teaching and non-teaching personnel...".

It is, therefore, our view that the College's management of human resources was a lawfully authorized activity.

The College stated that it had collected the complainant's personal information in order to carry out its administrative duties in an appropriate manner. These duties included documenting and responding to the complainant's co-workers' concerns about his behaviour; dealing with a situation which interfered with the functioning of the department, and undertaking various supervisory and administrative activities related to the disciplinary procedures of the College. The personal information which was collected included the views of co-workers about the complainant's behaviour, a psychiatric assessment about the complainant and his work situation, information about his job performance etc.

In our view, the College's collection of this personal information was necessary to the proper administration of a lawfully authorized activity, i.e. human resources management. Therefore, the College's collection of the complainant's personal information in the records was in accordance with section 38(2) of the Act.

Conclusion: The College collected the complainant's personal information in the records in accordance with section 38(2) of the Act.

Issue C: Did the College retain the records in accordance with section 40(1) of the Act?

Section 40(1) of the Act states:

Personal information that has been used by an institution shall be retained after use by the institution for the period prescribed by regulation in order to ensure that the individual to whom it relates has a reasonable opportunity to obtain access to the personal information.

Section 5(1) of Regulation 460 of the Act stipulates the length of time that personal information must be retained:

Personal information that has been used by an institution shall be retained by the institution for **at least one year after use** unless the individual to whom the information relates consents to its earlier disposal. (emphasis added)

The College advised that while an employee may ordinarily request the removal of a disciplinary notice that has been in his or her personnel file for more than one year, under section 16.4 of the collective agreement, the removal of such notice is at the discretion of the College. However, because of the nature of its transactions with the complainant, the College felt it was necessary to retain the records. Section 16.4 of the collective agreement states:

Each employee may, once each calendar year, request the removal of a disciplinary notice that has been in his/her official personnel file for more than one (1) year. The removal of such notice shall be at the discretion of the College. Such discretion shall not be exercised unreasonably.

The College stated that it continued to have concerns about the complainant's behaviour and conduct and the impact this had on the work environment. Human resource management was ongoing with respect to the measures the College had undertaken. Furthermore, the complainant was pursuing a grievance involving the issues raised by the records that contained his personal information. It appeared, therefore, that the College was still "using" the complainant's personal information that it had collected.

However, even if the College was no longer using this personal information, while an institution is required under the Act to retain personal information for a one year minimum period after its use, there is no maximum time limit. Therefore, it is our view that the College's retention of the complainant's records was not in contravention of the Act.

Conclusion: The College retained the personal information in the records in accordance with section 40(1) of the Act and section 5(1) of Regulation 460 made under the Act.

Other Matters

The complainant stated that the records contained false and misleading accusations about his job performance and attitude. The College advised us that they had informed the complainant of his right to make corrections to his personal information, as provided for under section 47 of the Act. We also informed the complainant of this right.

SUMMARY OF CONCLUSIONS

- The information contained in the records was personal information as defined in section 2(1) of the Act.
- The College's collection of the personal information in the records was in accordance with section 38(2) of the Act.
- The College's retention of the personal information in the records was in accordance with section 40(1) of the Act and section 5(1) of Regulation 460 made under the Act.

Original signed by: _____
Susan Anthistle
Compliance Review Officer

May 11, 1994

Date



Information and Privacy
Commissioner/Ontario
Commissionaire à l'information
et à la protection de la vie privée/Ontario

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INVESTIGATION REPORT

INVESTIGATION I94-009M

A SEPARATE SCHOOL BOARD

July 20, 1994



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a named separate school board (the Board).

The complainant had made a number of requests for access to information to the Board, under the Municipal Freedom of Information and Protection of Privacy Act (the Act).

The complainant who had a keen interest in the public education system, and the operations of the Board, appeared as a member of a panel discussing the education system in a live television broadcast. A Trustee of the Board was also a panel member. During the televised debate, the Trustee indicated that the Board had expended substantial resources in dealing with the complainant's access requests.

The complainant was concerned that he had been identified by the Trustee as making access requests that drained the resources of the Board. The complainant stated that he might run as a candidate in a forthcoming municipal election and was concerned that he would be perceived as a trouble maker by the voting public.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Was the personal information disclosed in accordance with section 32 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information", in part, as:

recorded information about an identifiable individual, including,

- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The complainant provided us with a video tape of the televised debate. During the discussion, the Trustee referred to the complainant by name, stating that many thousands of dollars and much staff time had been spent in dealing with his access requests.

The Board had records on file relating to the complainant's access requests and containing information about the cost and time spent to process his complainants. It is, therefore, our view that the information in question met the definition of paragraph (h) of the definition of "personal information" in section 2(1) of the Act.

Conclusion: The information was "personal information" as defined in section 2(1) of the Act.

Issue B: Was the personal information disclosed in accordance with section 32 of the Act?

Under the Act, an institution cannot disclose personal information in its custody or under its control except in the circumstances outlined in section 32.

Section 32(b) of the Act states that:

An institution shall not disclose personal information in its custody or under its control except,

(b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;

The Board stated that it had relied on section 32(b) for its disclosure. The complainant had informed the media that he had obtained certain information about the Board through access requests he had made to the Board. Several newspaper articles had mentioned this. The complainant had also made representations to the legislature which had been recorded in "Hansard". In addition, the complainant had also made a public presentation to the Board in which he had disclosed information about his requests. The Board held that the Trustee had, therefore, disclosed information that was in the public domain, and that the complainant had clearly wished members of the public to know that he had been able to obtain records from the Board through access requests under the Act.

We have examined the relevant newspaper articles, the relevant parts of "Hansard" and a copy of the complainant's presentation to the Board. However, it is our view that the information that the complainant had himself disclosed to the media and to others was not the specific information that had been disclosed by the Trustee during the television broadcast. It is our view, that the complainant did not identify the personal information disclosed by the Trustee "in particular" nor did he consent to its disclosure. Therefore, the Board's disclosure of the complainant's personal information was not in accordance with section 32(b) of the Act.

We have also examined the other provisions of section 32 and are of the view that none were applicable to the Board's disclosure of the complainant's personal information.

Conclusion: The complainant's personal information was not disclosed in accordance with section 32 of the Act

SUMMARY OF CONCLUSIONS

- The information in question was "personal information" as defined in section 2(1) of the Act.
- The complainant's personal information was not disclosed in accordance with section 32 of the Act

RECOMMENDATION

During the course of this investigation, the Board informed us that they were preparing a memorandum providing guidance on the appropriate disclosures of personal information relating to access requests under the Act, which they proposed to send to all trustees and senior staff.

It is our view that the issuance of this memorandum is an appropriate step to take to ensure compliance with the Act. We, therefore, recommend that the Board implement this step but to include in the memorandum's distribution not only trustees and senior staff but any other employee who may be involved in the processing of an access request.

Within six months of receiving this report, the Board should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation.

Original signed by: _____
Susan Anthistle
Compliance Review Officer

July 20, 1994
Date



Information and Privacy
Commissioner/Ontario
Commissionaire à l'information
et à la protection de la vie privée/Ontario

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INVESTIGATION REPORT

INVESTIGATION I94-009P

MINISTRY OF THE SOLICITOR GENERAL
AND CORRECTIONAL SERVICES

November 30, 1994



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ontario Civilian Commission on Police Services (the Commission) of the Ministry of the Solicitor General and Correctional Services (the Ministry). The Commission is a quasi-judicial authority which adjudicates appeals, hearings and inquiries under the Police Services Act.

The complainant had written to the Commission indicating that she believed that there should be an investigation into the adequacy, efficiency and competency of a named Police Service and Police Services Board (the Police).

An Advisor from the Commission had responded to the complainant's letter of complaint by stating:

I understand that the Policing Services Division of the Ministry of the Solicitor General is aware of the circumstances in (the named town) and for that reason and that there is no evidence before the Ontario Civilian Commission on Police Services we do not have any jurisdiction to become involved at this stage.

Thus, the Commission did not investigate the complainant's complaint. However, the Commission did investigate a similar complaint concerning the Police which had been filed by another member of the community.

The complainant stated that when the aforementioned Advisor was investigating the similar complaint, he had disclosed to the person who had filed the similar complaint and to another member of the community, the fact that the complainant had also filed a complaint against the Police. She further stated that her identity as a complainant had also been disclosed to the local Police Chief.

The complainant maintained that she had not consented to her name being released in this manner, and was concerned that this disclosure had contravened the Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Was the personal information disclosed to the two individuals in compliance with section 42 of the Act?
- (C) Was the personal information disclosed to the Police Chief in compliance with section 42 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The information in question was the complainant's name and the fact that she had complained about the Police to the Commission. In our view, this information met the requirements of paragraph (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was personal information, as defined in section 2(1) of the Act.

Issue B: Was the personal information disclosed to the two individuals in compliance with section 42 of the Act?

Under the Act, personal information in the custody or under the control of an institution cannot be disclosed except in the specific circumstances outlined in section 42.

The Ministry submitted that during the Commission's investigation into the similar complaint, the Advisor "may have mentioned" the complainant's name to the two individuals. The Ministry added that the Advisor "... cannot say with certainty that he did mention her name, cannot recall when this may have occurred and really cannot recall having done so."

The Ministry further submitted that if the Advisor had in fact disclosed the complainant's name "... it was during the course of a law enforcement investigation and disclosure was for a consistent purpose."

We contacted the two individuals. They stated that the Advisor had contacted them, and had identified the complainant, by name, as having complained about the Police.

We also spoke directly with the Advisor. He stated that although he did not specifically recall disclosing the complainant's name to the two individuals, he probably did.

Based on the above, it is our view that in all likelihood, the Advisor disclosed the complainant's personal information to the two individuals.

Although not specifically referred to in its original representations, the Ministry made a number of submissions which were of a nature and kind that would relate to section 42 of the Act.

Therefore, in our draft report, we examined whether this disclosure was in compliance with section 42 of the Act; in particular, sections 42(c) and (g) of the Act.

In its response to our draft report, the Ministry stated that it had relied on section 42(c) and not on section 42(g) for the disclosure. The Ministry submitted in part that the disclosure of the complainant's name was for a purpose consistent with law enforcement. We have considered the Ministry's representations and in our view, they appear to relate to both sections 42(c) and 42(g) of the Act; therefore, the application of both sections are discussed in this report.

Section 42(c)

Section 42(c) of the Act states that an institution shall not disclose personal information in its custody or under its control except "for the purpose for which it was obtained or compiled or for a consistent purpose".

The Ministry stated that when the complainant wrote to the Commission about the Police, the Advisor had already been assigned to investigate an identical complaint. The Ministry stated that, at that time, the Commission had received three complaints regarding the Police.

The Ministry added that when the Commission receives a complaint about a police service board, the affected police services board and/or police service is advised of the number of complaints, the nature of the complaints, and the identity of the complainants. The Ministry further stated that since the complainant's complaint was virtually identical to the complaint already being investigated, there had been no need to initiate another investigation.

The Ministry further stated that all relevant aspects must be taken into consideration during the course of an investigation, and that all relevant aspects would include similar allegations. It added that "The discussion of all relevant factors during a law enforcement investigation would be for a consistent purpose, the consistent purpose being the law enforcement investigation."

The Ministry also advised that the complainant had not specifically noted on her complaint that it was made in confidence, and thus she would have reasonably expected the disclosure of her personal information.

It is our view that the Ministry (i.e., the Commission) would have obtained or compiled the complainant's personal information for the purpose of dealing with her complaint. Since the Commission informed her that it did not have "any jurisdiction to become involved at this stage", and did not initiate an investigation into her complaint, it cannot be said that the complainant's identity was disclosed to the two individuals for the purpose for which it had been obtained or compiled, namely, dealing with her complaint.

It is also our view that the disclosure was not for a "consistent purpose".

Section 43 of the Act provides that:

Where personal information has been collected directly from the individual to whom the information relates, the purpose of a use or disclosure of that information is a consistent purpose under clauses 41(b) and 42(c) only if the

individual might reasonably have expected such a use or disclosure.

It is our view that since she had been informed that the Commission had no jurisdiction at the time and since the Commission did not initiate an investigation into her complaint, the complainant's reasonable expectation was likely that her involvement was over.

Further, the complainant's concerns were of the most general nature, unrelated to any specific incident or person. There appeared to be no reason why her identity would have been a relevant factor or be of assistance in the investigation of someone else's complaint. In our view, the complainant could not have reasonably expected that her name would be disclosed to the two other individuals.

It is our view that the Ministry's disclosure of the complainant's personal information to the two individuals was not in compliance with section 42(c) of the Act.

Section 42(g)

As previously mentioned, the Ministry also submitted that if the Advisor had disclosed the complainant's name, "it was during the course of a law enforcement investigation ...".

Section 42(g) of the Act states that an institution shall not disclose personal information in its custody or under its control except,

where disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

In order for section 42(g) of the Act to apply, the disclosure must be to an institution or a law enforcement agency in Canada. In this case, the disclosure was to two individuals. Therefore, the Ministry cannot rely on section 42(g) of the Act for the disclosure of the complainant's personal information to the two individuals.

We reviewed the remaining provisions of section 42 and found that none applied to the Ministry's disclosure of the complainant's personal information to the two individuals.

Conclusion: The disclosure of the personal information to the two individuals was not in compliance with section 42 of the Act.

Issue C: Was the personal information disclosed to the Police Chief in compliance with section 42 of the Act?

As previously mentioned, the Ministry stated that when complaints are received by the Commission, the affected police services board and/or police service is advised of the number of complaints, the nature of the complaints, and the identity of the complainants. The Ministry also stated that the Commission had received three complaints, and that although only one of the complaints was being investigated, the Police would have been made aware of the other two

complaints, one of them being the complainant's.

We asked the Advisor if he had disclosed the complainant's identity to the Police Chief. He stated that although he did not specifically recall disclosing this information, he probably did.

We also spoke to the Chief. He stated that he could not recall if the Advisor had identified the complainant as having made a complaint. The Chief referred back to his notes of June 16, 1993, which he made during a meeting with the Advisor. He stated that his notes made no mention of the complainant having filed a complaint.

The Chief, however, did recall being informed by another Ministry employee that the Commission had received three letters. The Chief stated that this employee identified the three complainants: a local businessman, the individual whose complaint the Commission had investigated, and the complainant.

Based on the above information, it would be reasonable to conclude that the Ministry disclosed the complainant's personal information to the Police Chief.

Although the Ministry did not specifically indicate, in its original representations, that it was relying on section 42 of the Act for the disclosure to the Police Chief, its submissions appear to be related to this section of the Act. We, therefore, examined whether the disclosure was in compliance with section 42 of the Act; specifically, whether it was in compliance with sections 42(c) and (g) of the Act.

Section 42(c)

As previously stated, section 42(c) of the Act permits the disclosure of personal information "for the purpose for which it was obtained or compiled or for a consistent purpose".

The Ministry submitted that "... in order for individuals, boards etc. to adequately and accurately respond to complaints or allegations and also to fairly determine their own rights, they have to be aware of the nature of the complaint and the person making the allegations or complaints."

Under Issue B, we stated that it was our view that the Ministry (i.e., the Commission) would have obtained or compiled the complainant's personal information for the purpose of dealing with her complaint. Since the Commission informed her that it did not have "any jurisdiction to become involved at this stage", and accordingly did not initiate an investigation into her complaint, it cannot be said that her identity as a complainant was disclosed for the purpose for which it had been obtained or compiled.

There may be instances in which such a disclosure to the Police Chief might have been justified, for example, where the disclosure was necessary to determine whether the complaint merited an investigation. In the circumstances of this complaint, however, we have not been persuaded that this was the case.

It is also our view that the disclosure was not for a "consistent purpose". As previously indicated, section 43 of the Act provides that a disclosure is for consistent purpose only if the individual to whom the information relates "might have reasonably expected" such a disclosure.

It is our view that since no investigation into her complaint had taken place, the complainant could not have reasonably expected that her name or her complaint would be disclosed to the Police Chief. Although the Commission was investigating similar concerns, it did not inform the complainant of the other investigation.

It is our view, therefore, that the disclosure to the Police Chief was not in compliance with section 42(c) of the Act.

Section 42(g)

The Ministry stated that investigations of this nature are conducted under section 25(1) of the Police Services Act (the PSA). It further stated that the investigation conducted by the Advisor fell within the definition of "law enforcement" in section 2(1) of the Act, and that investigations of this nature could lead to proceedings in a court or tribunal and penalties or sanctions may be imposed in accordance with sections 25(4), (5) and (6) of the PSA.

The Ministry further stated that "all relevant aspects must be taken into consideration during the course of any law enforcement investigation. If all factors and aspects are not considered just and fair conclusions or recommendations cannot be made. All relevant aspects would include similar allegations".

Given the Ministry's submission, we examined section 42(g) of the Act with respect to this disclosure. As previously stated, this section permits disclosure to "an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result."

For section 42(g) to apply, the disclosure must be in **aid** of the investigation undertaken. Since the Commission did not initiate an investigation into the complainant's complaint, it is our view that disclosure of her name would not have aided an investigation into her complaint, because no investigation into it took place.

It is also our view that disclosing the complainant's identity would not have aided the investigation into the other individual's complaint, even though the complaints were similar. The complainant's concerns were of the most general nature, unrelated to any specific incident or person. It is difficult to see how her identity could have been of assistance in formulating a response in the investigation of someone else's complaint.

It is, thus, our view that the disclosure of the complainant's personal information, in the circumstances of this complaint, would not have aided the Ministry's (i.e., the Commission's) investigation, and thus was not in compliance with section 42(g) of the Act.

We reviewed the remaining provisions of section 42 and found that none applied to the disclosure of the complainant's personal information to the Police Chief.

Conclusion: The disclosure of the personal information to the Police Chief was not in compliance with section 42 of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was personal information, as defined in section 2(1) of the Act.
- The disclosure of the personal information to the two individuals was not in compliance with section 42 of the Act.
- The disclosure of the personal information to the Police Chief was not in compliance with section 42 of the Act.

RECOMMENDATION

The Ministry should take steps to ensure that personal information is not disclosed, except where the disclosure is in compliance with section 42 of the Act.

Within six months of receiving this report, the Ministry should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation.

Original Signed By: _____
Susan Anthistle
Compliance Review Officer

November 30, 1994
Date



CASAN
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-I56

INVESTIGATION REPORT

INVESTIGATION I94-011P

MINISTRY OF NORTHERN DEVELOPMENT AND MINES

September 13, 1994



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of Northern Development and Mines (the Ministry).

In 1984, the complainant acquired a parcel of land that held mining rights granted under the Mining Act. In 1991, the Mining Act was amended, providing for fee increases and changes to the mining land tax (previously called acreage tax) rate. The complainant believed that the amendments would lead to the confiscation of the properties of owners who could not pay the higher taxes to maintain their mining rights.

On May 3, 1993, the complainant wrote to all but three provincial members of parliament (MPPs) soliciting their support for a private member's bill which he felt would correct "an injustice inadvertently caused by the recent changes to the Mining Act and Regulations."

On May 25, 1993, the Minister of Northern Development and Mines (the Minister), one of the three MPPs who had not received the letter from the complainant, wrote to the Liberal MPP who was his party's "mines critic." In her correspondence, the Minister referred to the complainant's letter and discussed his particular situation with respect to his property and the mining land taxes.

On January 10, 1994, the complainant wrote again to those MPPs from whom he had not received a reply to his earlier letter. At this time, a copy of the Minister's letter was forwarded to the complainant from the Liberal MPP via another MPP -- the member who had planned to introduce the private member's bill.

The complainant believed that the Minister's letter to the Liberal MPP was an "attempt to discredit me and my position" and to "distract attention from the issue I have raised." The complainant stated that in his letter to MPPs, he "was careful to focus on the inequity caused by the Act" and not the issue "related to the fact that the Ministry had previously illegally levied a tax on my property." The complainant, therefore, believed that the Minister's letter disclosing information about him, his property and its mining potential, and the provincial mining taxes he had paid, was contrary to the provisions of the Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question, "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Did the Ministry disclose the complainant's personal information in compliance with section 42 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question, "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information" in part, as:

recorded information about an identifiable individual, including

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or **information relating to financial transactions in which the individual has been involved;**
- (h) the individual's name where it appears with other personal information relating to the individual...

(emphasis added)

The Minister's letter to the MPP included the following information:

The name of the complainant; when he acquired his parcel of land and what it consisted of; how much he paid in acreage tax and at what time; that he was the only holder of patented mining lands who had continually expressed concerns about the increases in the mining land taxes; the complainant's views that this was an attempt by the province to confiscate his property; that if he chose not to pay mining land taxes on his property, he would be able to continue to enjoy the use of his lands; that he had not engaged in any mining activity on his property nor had he expressed plans to do so; his views that he should continue to maintain the mining rights to his property but be exempt from the new mining tax rate; that he did not want the mining or mineral exploration sector to be allowed on his land if he relinquished his mineral rights and continued to hold the surface rights; that the Minister and her predecessor had had contacts with him and that several ministry staff had spent many hours with him on this issue; that he might not want to pay increased taxes for a right that in the past was inexpensive to hold; and that he had paid mining taxes in the past and had only objected strenuously since 1991 when the increases were enacted.

It is our view that the above information met the requirements of either paragraphs (b) or (h) of the definition of personal information in section 2(1) of the Act.

In its submissions to our draft report, the Ministry said that it was not factually correct to say that the Minister's letter had disclosed how much the complainant had paid in acreage taxes, since no amount had actually been given. However, the letter gave the number of hectares for which the complainant had paid taxes, at a specific rate per year, for a certain number of years. Thus, the acreage taxes that the complainant had paid could easily be determined from this information. In our view, this constituted a disclosure of how much the complainant had paid in acreage taxes.

Conclusion: The information was "personal information" as defined in section 2(1) of the Act.

Issue B: Did the Ministry disclose the personal information in compliance with section 42 of the Act?

Under the Act, an institution cannot disclose personal information in its custody or under its control except in the circumstances outlined in section 42.

The Ministry submitted that the complainant had, through disclosures in newspaper articles, discussions with an investigative journalist and in writing to the MPPs, "impliedly consented to the disclosure" of his personal information.

Section 42(b) of the Act states that an institution shall not disclose personal information in its custody or under its control except:

where the person to whom the information relates has identified that information in particular and consented to its disclosure;

Two newspaper articles, one of which was written by the complainant, expressed his concern that the amended legislation would lead to the confiscation of properties such as his. In the background appendix to his letter to the MPPs, the complainant mentioned that he had corresponded with the Minister's staff about the legislation, as well as pointing out that "the tax is now extended to other properties such as mine" and that he did not support the "effective theft of my property by mining firms."

However, the complainant contended that in his letter, he had been "careful to focus only on the inequity caused by the Act." He did not introduce any information relating to the other issue of the Ministry's "improper administration" with respect to the previous levy of taxes on his property. The complainant further advised that the Mining Act "deals with the policy issues and the intent of the legislation and my letter to M.P.P.s restricted itself to this issue;" the information disclosed in the Minister's letter "was not directly relevant."

Upon reviewing this material, we concluded that the Ministry's disclosure was not in compliance with section 42(b) of the Act. However, in reaching this conclusion, we recognize that the Ministry may have believed that as a result of the complainant's publicly-declared views in this area, not only through newspaper articles but also in letters written to MPPs, the Ministry would be permitted to discuss the matter publicly. But the Ministry disclosed a considerable amount of additional information -- the complainant's personal information which the Ministry had in its possession as a result of his personal dealings with the Ministry.

While parts of the personal information disclosed by the Ministry were similar to the information disclosed in the complainant's letter to the MPPs and the newspaper articles, it is our view that it could not be said that the complainant had identified the personal information contained in the Minister's letter "in particular", nor "consented" to its disclosure. Thus, it is our view that the Ministry's disclosure was not in compliance with section 42(b) of the Act.

The Ministry also submitted that the disclosure might "reasonably have been expected" by the complainant so as "to bring it within the phrase 'consistent purpose' in clause 42(c) of the Act."

Section 42(c) of the Act permits the disclosure of personal information:

for the purpose for which it was obtained or compiled or for a consistent purpose;

In other words, the disclosure must either be for the same purpose for which the personal information was collected or for a purpose that was consistent with that purpose. Section 43 of the Act further provides that:

Where personal information has been collected directly from the individual to whom the information relates, the purpose of a use or disclosure of that information is a consistent purpose under clauses 41(b) and 42(c) only if the individual might reasonably have expected such a use or disclosure.

It is our view that one of the purposes for which the Ministry had compiled or obtained the complainant's personal information would have been to maintain administrative records/correspondence files about the complainant and his property, which would include information about when he had acquired his property, the acreage taxes he had paid prior to 1991, his mining rights, etc.

The Ministry stated that the Minister's letter was not written in response to any particular inquiry from the Liberal MPP, and no specific purpose was provided for the disclosure of the complainant's personal information. However, in her letter, the Minister explained that she was aware that the complainant had sent the Liberal MPP a letter soliciting his support for the private member's bill and that she "would like to take this opportunity to bring you up to date on the details of our mining tax and the issue that is of concern to (the named complainant)."

The Minister's letter, however, included not only the details of the mining tax and the general issue of the intent of the legislation which was the object of the complainant's concern, but also gave specific information about the complainant and his property: when he had purchased it, whether he had engaged in any mining activities; that he did not want the mining or mineral exploration sector to be allowed on his land, etc. (See details given under issue A).

Although the complainant had disclosed some personal information in his letter that was similar to the personal information disclosed by the Minister, as previously noted, the complainant contended that the personal information disclosed by the Minister was about a separate matter which was not relevant to the issue he had raised, and which he had taken care not to introduce in his letter to the MPPs.

Having carefully considered both the Ministry's submissions and the complainant's submissions, it is our view that the complainant could not have "reasonably expected" that the specific details collected by the Ministry for its files about him, his property, and his experiences with the Ministry, would subsequently be disclosed in this manner (through the Minister's letter to the MPP).

Therefore, it is our view that the Ministry's disclosure of the complainant's personal information for the purpose of updating the Liberal MPP on the mining land tax and the complainant's general concern could not be said to have been for a "consistent purpose." Thus, the Ministry's disclosure was not in compliance with section 42(c) of the Act.

We have also examined the other provisions of section 42 of the Act and found that none applied in the circumstances of this case.

Conclusion: The disclosure of the complainant's personal information was not in compliance with section 42 of the Act.

OTHER MATTERS

In its submissions to our draft report, the Ministry stated that while we were correct in saying that the Minister's letter was not written in response to the Liberal MPP, it was, however, written in reply to inquiries and requests from numerous MPPs seeking information about the same subject matter. However, no evidence in support of the existence of such inquiries was provided to us. In any event, this information would have had no impact on our conclusion regarding the unauthorized disclosure of the complainant's personal information.

In its submissions, the Ministry also raised the issue of whether section 37 of the Act was applicable to the personal information disclosed in this case since, "it deals with the personal information in records at a land registry office (ownership of land, date of acquisition, size of parcel) or in news paper (sic) articles which were and continue to be available to the public through many public libraries ..." If section 37 applied, then the privacy protection afforded by Part III of the Act would not be applicable.

In his submissions, the complainant also addressed this matter. He stated that "the information was available to no one outside of the Ministry." With respect to the taxes he had paid, the complainant stated that, in his view, "it would be impossible for an outsider to find out that I had paid a tax prior to 1991 or even to suspect that I had paid a tax at that time, unless they were told by the Ministry. Anyone who set out to find out if I was liable for such a tax ... would determine that there was no tax applicable on the property ... The land title information in the land registry office would provide no information on a superficial examination ... Only the Ministry knew that the tax had been levied."

Section 37 of the Act states that:

This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public.

It is our view that, if applicable, section 37 excludes personal information from the privacy provisions of Part III of the Act only if the information in question is held by the institution maintaining it for the express purpose of creating a record available to the general public. **Other** institutions cannot claim the benefit of the exclusion for the same personal information unless they, too, maintain the information for the purpose of making it available to the general public. In our view, this interpretation is not only reasonable, but also in keeping with one of the fundamental goals of the Act, namely "to protect the privacy of individuals with respect to personal information about themselves held by institutions." In the circumstances of this case, it cannot be said that the Ministry was maintaining the complainant's personal information (that was later disclosed in the Minister's letter) specifically for the purpose of creating a record available to the general public. Accordingly, section 37 of the Act did not apply.

However, even if a broader interpretation of section 37 were adopted, it would still not be applicable to much of the personal information disclosed in this case, such as, the information about the complainant not having engaged in any mining activity on his property, or any other information about the complainant's personal dealings with the Ministry.

Conclusion: Section 37 of the Act was not applicable.

CONCLUSIONS

- The information was "personal information" as defined in section 2(1) of the Act.
- The disclosure of the complainant's personal information was not in compliance with section 42 of the Act.
- Section 37 of the Act was not applicable.

RECOMMENDATION

In our draft report, we recommended that the Ministry take appropriate steps such as to remind all officials and staff of the requirements of the Act, in order to ensure that personal information is not disclosed except in compliance with the Act.

The Ministry has responded that it accepts this recommendation and has taken the necessary steps towards its implementation. Within six months of receiving this report, the Ministry should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation.

Original signed by
Ann Cavoukian, Ph.D.
Assistant Commissioner

September 13, 1994
Date

POSTSCRIPT

In his submissions to the draft report, the complainant requested that an additional recommendation be made to require that, "the Ministry release to me copies of all documents within the Ministry and sent from the Ministry ... along with an identification of all recipients of the correspondence or communications." The Act provides the complainant with the means to make an access request to the Ministry for the desired information. The Ministry may, however, wish to provide the complainant with the information he seeks, in the absence of a formal access request, ensuring, however, that any release of information is in compliance with the Act.



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Information and Privacy
Commissioner/Ontario
Commissionaire à l'information
et à la protection de la vie privée/Ontario

INVESTIGATION REPORT

INVESTIGATION I94-023P

A DISTRICT HEALTH COUNCIL



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a District Health Council (the Council).

The complainant was the Executive Director of the Council from 1989 until October 1993. In October 1993, the complainant left this position for a secondment with the Ministry of Health (the Ministry). The complainant maintained that, before she took up the new position with the Ministry, numerous disclosures of her personal information were made by the Council to the Ministry; to a local newspaper; to Members of a Council committee; and to the public. These disclosures were related to her employment at the Council and her performance as Executive Director, and included information that she had allegedly been terminated and had been given a number of alternatives, one of which was the secondment at the Ministry.

She also complained that there had been a disclosure by the Council's acting Chair to the Ministry that she was seeking access to information under the Freedom of Information and Protection of Privacy Act (the Act).

The complainant stated that these disclosures were contrary to section 42 of the Act.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Did the Council disclose the complainant's personal information to the Ministry, and if so, was the disclosure in compliance with section 42 of the Act?
- (C) Did the Council disclose the complainant's personal information to a local newspaper, and if so, was the disclosure in compliance with section 42 of the Act?
- (D) Did the Council disclose the complainant's personal information during two Committee meetings and in the minutes of these meetings? If so, were the disclosures in compliance with section 42 of the Act?
- (E) Was the Council's disclosure to the public of the complainant's personal information, contained in two letters of resignation from two Council Members, in compliance with section 42 of the Act?
- (F) Did the Council's acting Chair disclose to the Ministry that the complainant was seeking access to information under the Act, and if so, was the disclosure in compliance with section 42 of the Act?

- (G) Was the Council's disclosure of the complainant's personal information to a Ministry employee in compliance with section 42 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) states, in part:

"personal information" means recorded information about an identifiable individual, including,

(g) the views or opinions of another individual about the individual, and

(h) the individual's name where it appears with other personal information relating to the individual...

The information in each of the disclosures in question related to the complainant's employment at the Council and her performance as Executive Director, including information about her termination of employment, severance pay, and secondment, and the views and opinions of two other Council Members about the complainant.

In our view, this information met the requirements of paragraphs (g) and (h) in section 2(1) of the Act.

Also at issue was the complainant's name together with the fact that she had made an access request under the Act. As we have previously found in other compliance investigations and orders, this information met the requirements of paragraph (h) in section 2(1) of the Act.

Conclusion: The information in question was "personal information" as defined in section 2(1) of the Act.

Issue B: Did the Council disclose the complainant's personal information to the Ministry, and if so, was the disclosure in compliance with section 42 of the Act?

The complainant stated that the Council's Executive Members disclosed her personal information to a branch of the Ministry. The complainant provided us with a confidential memorandum addressed to the Council Members, dated October 1993, in which the Chair of the Council stated that a certain decision had been made after **consultation** with the Ministry. The complainant stated that the information disclosed to the Ministry during this "consultation" was her employment and performance related personal information.

The Council informed us that there had been a discussion between the Chair and the Ministry, where the possible termination of the complainant's employment, the need for severance pay, and the possibility of a secondment with the Ministry had been discussed. The Council advised

us that this discussion took place because any decision involving the possible termination of an employee and the payment of severance pay, required consultation with the funding agency, which, in this case, was the Ministry. The Council also discussed the matter with the Ministry in an attempt to provide the complainant with an alternative to the termination of her employment, (i.e. a possible secondment with the Ministry).

However, the Council stated that no personal information had been provided relating to the complainant, and therefore, there had been no disclosure of the complainant's personal information.

As we have previously stated, information about the complainant's termination, severance pay, and secondment is personal information under the Act. Therefore, it is our view that, in its discussion with the Ministry, the Council disclosed the complainant's personal information.

Under the Act, personal information in the custody or under the control of an institution cannot be disclosed except in the specific circumstances outlined in section 42 (For full text, see Appendix A).

The Council submitted in its response to our draft report that, had personal information been disclosed, it would have been disclosed in compliance with section 42(e) of the Act. Section 42(e) states that an institution shall not disclose personal information in its custody or under its control except "for the purpose of complying with an Act of the Legislature or an Act of Parliament or a treaty, agreement or arrangement thereunder".

The Council stated that the information in question was disclosed to comply with the duties of the Council as provided in an Order-In-Council which requires that the Council advise the Minister of Health on the planning and co-ordination of health services in its designated area. The Council further stated that the co-ordination of health services is accomplished in part by the work of the Executive Director. Therefore, any decision to terminate the Executive Director affects the co-ordination of health services.

It is our view that the word "complying" in section 42(e) indicates that the requirement in question must be **mandatory** in nature. In other words, in order for section 42(e) to apply, the Order-In-Council must impose a duty on the Council to disclose the complainant's personal information. It is our view that the Order-In-Council does not compel the Council to disclose such personal information. Therefore, in our view, section 42(e) of the Act does not apply in the circumstances of this case.

Further, while the Ministry was the funding agency for the Council and special budget requirements may have been needed by the Council in order to pay severance to an employee, we are not persuaded that in the circumstances of this case, the funding relationship required the disclosure of the complainant's specific personal information. It is also our view that had the Council wanted to arrange a secondment at the Ministry for the complainant, such an arrangement should have been made after the complainant had been made aware that she had been terminated and had provided her consent for her personal information to be disclosed to the Ministry for this purpose.

We have examined the remaining disclosure provisions of section 42 of the Act. It is our view that the Council's disclosure of the complainant's personal information to the Ministry was not

in compliance with section 42 of the Act.

Conclusion: The Council's disclosure of the complainant's personal information to the Ministry was not in compliance with section 42 of the Act.

Issue C: Did the Council disclose the complainant's personal information to a local newspaper, and if so, was the disclosure in compliance with section 42 of the Act?

The complainant stated that the Council had disclosed to a local newspaper that she had been "let go". The complainant was concerned that one of the Council Members may have intentionally disclosed her personal information even though they knew that they had a responsibility to keep this information confidential.

The newspaper article was published in November 1993, the day after a Council meeting had been held in which the minutes of a "special council meeting" had been discussed. At the "special council meeting" the complainant's release as Executive Director had been discussed.

The newspaper article stated that,

The Executive director of the [named health council] has been "let go," a board member says.

The director, who did not wish to be identified, confirmed last night that [the complainant] ... was "let go" last month.

The Council stated that the newspaper article, for the most part, reiterated a news release which had been prepared by the complainant and which she had provided to the Council through her lawyer. The article consisted primarily of an interview with the complainant herself. With respect to the reference in the article to the "director" (who apparently did not wish to be identified), the Council stated that it did not know who or if a director had spoken to the newspaper. However, the Council stated that, from the beginning of the process, it had fully emphasized to all of its directors the importance of confidentiality.

We contacted two former Council Members who had resigned as a result of the complainant's departure from the Council. One of these Members advised us that he had not disclosed any information to the press regarding whether the complainant was "let go". However, the other Member stated that she had been contacted by the newspaper.

This Member stated that the newspaper reporter had informed her that the complainant had been let go. The newspaper had requested that the Member confirm this information, which she did. She stated that the newspaper reporter was clearly aware that the complainant had been released from the Council, prior to the reporter's contact with her.

While it appears that a former Council Member confirmed to the newspaper that the complainant had been let go, it is unclear if this or another "board member" initially disclosed the information. Since only Council Members were aware at that time that the complainant had

allegedly been "let go", and had accepted a secondment with the Ministry, it is possible that the information in question was disclosed by a Council Member. However, based upon the available information, we were unable to establish conclusively if a Council Member had made such a disclosure.

We have, however, examined the disclosure provisions of section 42 of the Act. It is our view that if a Council Member had disclosed the complainant's personal information to the local newspaper, this disclosure would not have been in compliance with section 42.

Conclusion: We were unable to determine if the Council disclosed the complainant's personal information to the newspaper.

Issue D: Did the Council disclose the complainant's personal information during two Committee meetings and in the minutes of these meetings? If so, were these disclosures in compliance with section 42 of the Act?

The complainant stated that certain Council Members disclosed her employment and performance related personal information during two separate meetings of one of the Council's standing committees (the Committee).

The minutes from the first Committee meeting, held on November 16, 1993, stated that the Council's Interim Executive Director, appointed after the complainant's departure, had attempted to clarify the situation regarding the complainant's secondment. He stated that "when she was relieved of her duties, she was given a number of alternatives and she chose the Ministry secondment where she will continue to work in the mental health field". The minutes also noted that one Committee Member was concerned about the amount of money being spent by the Council to reach a "settlement" with the complainant. The complainant maintained that this confirmed that the Committee Member was aware that the secondment was not a secondment but rather a dismissal.

The draft minutes for the second Committee meeting, which was an Extraordinary Committee meeting held on December 8, 1993, stated that the Council's acting Chair and a Council Member had discussed the opinions of the Council and Executive Committee; that there had been performance related difficulties with the complainant, and that she had been released from her employment.

The minutes suggested, therefore, that there had been a disclosure of the complainant's personal information at the meeting. However, the Council submitted that "notes" had been taken at these meetings that were not "minutes" of these meetings. These notes had been prepared by a staff member who had been in attendance and were released before the Council had reviewed them. They had been circulated without the usual procedures being followed that would have been followed if they had been actual minutes, which would have included a review by the Council.

The Council also stated that the notes were not accurate. It explained that during the November 16, 1993 meeting, the Interim Executive Director had not disclosed that the complainant had been "relieved" of her duties, and that she had been given a number of alternatives before choosing the secondment. The Council also stated that during the December 8, 1993 meeting,

neither the acting Chair nor the Council Member had indicated that there had been performance related difficulties with the complainant and that she had been released from employment. Both Council Members had only indicated that the complainant had taken a secondment with the Ministry.

The Council stated that because the notes were not formal minutes, and because it did not as a matter of procedure, review informal notes before they were distributed, it had not taken any steps to correct the notes.

The Council maintained that Council Members did not disclose the information in question. We are, therefore, unable to determine conclusively if the complainant's personal information was disclosed by the Council during the Committee meetings.

We also examined the disclosure of the complainant's personal information contained in the minutes for the Committee meetings when they were released to Committee Members.

While the Council maintained that the notes taken at the Committee meetings were not "minutes", the notes were titled and prepared as minutes by the Committee. It is our view that the notes could be considered to be minutes of the Committee meetings in question.

Even though the Council maintained that the minutes were not correct, nevertheless, the minutes contained the personal information of the complainant and were released to the Committee Members. Therefore, while the Council Members might not have disclosed the complainant's personal information at the Committee meetings, the complainant's personal information appeared in the minutes for these Committee meetings when they were released. Thus, the complainant's personal information was disclosed by the Council.

We have examined the disclosure provisions of section 42 of the Act. It is our view that the Council's disclosure of the complainant's personal information as it appeared in the minutes of the Committee's meetings, was not in compliance with section 42 of the Act.

Conclusion: We were unable to determine conclusively that the complainant's personal information was disclosed by the Council during the Committee meetings.

The Council's disclosure of the complainant's personal information as contained in the minutes of the Committee's meetings, was not in compliance with section 42 of the Act.

Issue E: Was the Council's disclosure to the public of the complainant's personal information, contained in two letters of resignation from two Council Members, in compliance with section 42 of the Act?

The complainant stated that the Council disclosed, to the public, her personal information contained in two letters of resignation from two Council Members. This included the opinions and views of the resigning Council Members about the complainant. The Council included the

letters in a package provided to the public and media before a Council meeting. The letters contained personal information relating to the complainant's termination of her employment, and the personal opinions of the two Council Members about the complainant. Both letters were addressed to the Ministry and carbon copied to the Council and certain specific Council Members. One of the letters was carbon copied to two former Council Members and to the complainant.

The Council acknowledged that the two letters of resignation were included in a package made available to the public prior to a Council meeting. The Council stated that since the first resignation letter was addressed to the Minister of Health (the Minister), and copied to the Council Members, the resigning Council Member could have expected the resignation to be a public matter and that the Council "had no ability not to make it a public matter".

It was the Council's position that the Council Member who addressed the second letter to the Minister had also expected and required his letter of resignation to be made public. The Council was of the view that these letters had already been copied to a number of people and had been made public by the writers themselves.

Section 42(c) states that an institution shall not disclose personal information in its custody or under its control except " for the purpose for which it was obtained or compiled or for a consistent purpose". Further, section 43 states:

Where personal information has been collected directly from the individual to whom the information relates, the purpose of a use or disclosure of that information is a consistent purpose under clauses 41(b) and 42(c) only if the individual might reasonably have expected such a use or disclosure.

Section 42(c) and 43 of the Act would apply only if the **complainant** might reasonably have expected the disclosure of the letters containing **her** personal information to the public and media. Whether the resigning Council Members might reasonably have expected the disclosure of their letters is not a relevant factor.

It is our view that the complainant would not reasonably have expected that her personal information, as contained in these letters, would be included in a package made available to the public prior to a Council meeting. Therefore, in our view, section 42(c) of the Act does not apply in these circumstances.

In addition, it is our view that by addressing the letters to the Minister and carbon copying certain other individuals, the resigning Council Members did not make the letters "public". This is discussed in more detail under "Other Matters".

We also examined the remaining provisions of section 42. It is our view that none applied to the disclosure to the public of the complainant's personal information contained in the resignation letters. Therefore, the disclosure was not in compliance with the Act.

Conclusion: The disclosure of the complainant's personal information in the resignation letters was not in compliance with section 42 of the Act.

Issue F: Did the Council's acting Chair disclose to the Ministry that the complainant was seeking access to information under the Act, and if so, was the disclosure in compliance with section 42 of the Act?

The complainant stated that the Council's acting Chair disclosed to the Ministry that the complainant was seeking access to information under the Act. The complainant stated that this occurred on January 24, 1994, when the acting Chair responded by e-mail to the complainant about her request for access to information, and copied staff at a branch of the Ministry.

The Council stated that a request for access to information made under the Act is not personal information. The Council also stated that the complainant had sent numerous requests by e-mail to the acting Chair and that, in this case, the complainant indicated that she was requesting information and wanted to avoid the "FOI". The Council maintained that, as a result, the acting Chair did not consider the complainant's request to be a request for access to information under the Act.

As we previously stated, the complainant's name together with the fact that she had made an access request under the Act was personal information under the Act. The complainant's e-mail to the acting Chair, dated January 24, 1994, identified the subject line of the e-mail as "FOIPPA Request". The responding e-mail from the acting Chair to the complainant, which was copied to the staff at the Ministry, identified the subject line of the e-mail as "FOI Request", and the first line of the e-mail read "Thank you for your memo regarding your request for information under the FOIPPA." Therefore, in our view, by copying the Ministry in the responding e-mail, and identifying that the complainant was seeking access to information under the Act, the acting Chair disclosed the complainant's personal information.

We have examined the disclosure provisions of section 42 of the Act. It is our view that the disclosure to the Ministry that the complainant had made an access request was not in compliance with section 42 of the Act.

Conclusion: The disclosure of the complainant's personal information to the Ministry, i.e. that the complainant had made an access request, was not in compliance with section 42 of the Act.

Issue G: Was the Council's disclosure of the complainant's personal information to a Ministry employee in compliance with section 42 of the Act?

With her submissions on the draft report, the complainant provided a copy of a memorandum and notes written by the Council's Chair at that time, to the individual who became the Council's Interim Executive Director and to the individual who replaced the Chair as acting Chair. The memorandum stated that the notes had been written in the back of the Chair's day-timer and that they had been discussed with an employee of the Ministry. The notes were related to the complainant's work performance. The complainant believed that the disclosure

by the Chair of her personal information contained in the notes to the Ministry employee was contrary to the Act.

We contacted the Ministry employee. She advised us that she did not recall any conversations with the Chair regarding the complainant. She also stated that she had been the official "contact person" at the Ministry for the Council from July 1990 to approximately February 1992, before the complainant's termination in October 1993.

In its representations on this issue, the Council stated that there had been a discussion between the Chair and the Ministry employee. However, the Ministry employee was the person to whom the Council looked with respect to details surrounding a contract it was seeking. The Council stated that the Chair had contacted the employee to discuss the problems that had developed with the contract and to confirm if the Ministry wished the Council to proceed on retaining a specific consultant (the consultant). The Council submitted that given that the Ministry was funding the study associated with obtaining the contract and services of the consultant, it was reasonable to expect the Chair to consult with the Ministry.

The Council also stated that the comments about the complainant's performance recorded in the notes were not the Chair's but had been passed on to her by the consultant. In our view, this is not relevant to the issue of disclosure by the Chair to the Ministry employee.

We examined the Chair's memorandum and notes. The memorandum stated that "I also discussed these notes with...[the Ministry employee]". At the bottom of the notes was written "Call [the Ministry employee]". It is, therefore, our view that the information about the complainant's performance recorded in the Chair's notes in the day-timer was disclosed in whole or in part to the Ministry employee. It is also our view that this disclosure occurred prior to the complainant's termination.

We examined the provisions of section 42 of the Act. It is our view that none applied to the disclosure of the complainant's performance related information to the Ministry employee.

Conclusion: The disclosure of the complainant's personal information to the Ministry employee was not in compliance with section 42 of the Act.

OTHER MATTERS

As indicated previously under Issue E, the Council submitted that the letters of resignation from two Council Members had already become public by virtue of being addressed to the Minister and carbon copied to other people.

Section 37 of the Act states that:

This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public.

In our recent investigations, we have held that section 37 of the Act applies only where the institution complained of is the institution that is maintaining the personal information for the purpose of creating a record available to the general public. It is our view that, while the Minister and the other individuals carbon copied on the letters were aware that the two Council Members had resigned, it cannot be said that the Council was maintaining the complainant's personal information contained in these letters, which were later disclosed in the Council meeting, specifically for the purpose of creating a record available to the general public. It is, therefore, our view that section 37 of the Act did not apply.

Further, it is our view that the Council did not need to include the resignation letters in the package made available prior to its meeting. The Council could have publicly noted the resignations without releasing the actual letters containing the complainant's personal information.

Conclusion: Section 37 of the Act was not applicable to the complainant's personal information contained in the resignation letters.

SUMMARY OF CONCLUSIONS

- The information in question was "personal information" as defined in section 2(1) of the Act.
- The Council's disclosure of the complainant's personal information to the Ministry was not in compliance with section 42 of the Act.
- We were unable to determine if the Council disclosed the complainant's personal information to the newspaper.
- We were unable to determine conclusively that the complainant's personal information was disclosed by the Council during the Committee meetings.

The Council's disclosure of the complainant's personal information as contained in the minutes of the Committee's meetings, was not in compliance with section 42 of the Act.

- The disclosure of the complainant's personal information in the resignation letters was not in compliance with section 42 of the Act.
- The disclosure of the complainant's personal information to the Ministry, i.e. that the complainant had made an access request, was not in compliance with section 42 of the Act.
- The disclosure of the complainant's personal information to the Ministry employee was not in compliance with section 42 of the Act.

- Section 37 of the Act was not applicable to the complainant's personal information contained in the resignation letters.

RECOMMENDATION

We recommend that the Council take steps to ensure that all Council Members and staff are aware of the disclosure provisions in the Act. For example, all Council Members, staff, and committee members who handle personal information should be reminded in writing of the limited circumstances under which the disclosure of personal information is permitted. Any newly appointed Council Members and staff should be similarly informed.

Within six months of receiving this report, the Council should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation.

Original Signed by:
Susan Anthistle
Compliance Review Officer

December 23, 1994
Date

42. An institution shall not disclose personal information in its custody or under its control except,

- (a) in accordance with Part II;
- (b) where the person to whom the information relates has identified that information in particular and consented to its disclosure;
- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
- (d) where disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and where disclosure is necessary and proper in the discharge of the institution's functions;
- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament or a treaty, agreement or arrangement thereunder;
- (f) where disclosure is by a law enforcement institution,
 - (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
 - (ii) to another law enforcement agency in Canada;
- (g) where disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
- (i) in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased;
- (j) to a member of the Legislative Assembly who has been authorized by a constituent to whom the information relates to make an inquiry on the constituent's behalf or, where the constituent is incapacitated, has been authorized by the next of kin or legal representative of the constituent;
- (k) to a member of the bargaining agent who has been authorized by an employee to whom the information relates to make an inquiry on the employee's behalf or, where the employee is incapacitated, has been authorized by the next-of-kin or legal representative of the employee;

- (l) to the responsible minister;
- (m) to the Information and Privacy Commissioner; and
- (n) to the Government of Canada in order to facilitate the auditing of shared cost programs.

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Information and Privacy
Commissioner/Ontario
Commissionaire à l'information
et à la protection de la vie privée/Ontario

INVESTIGATION REPORT

INVESTIGATION I94-029P

MINISTRY OF COMMUNITY AND SOCIAL SERVICES



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of Community and Social Services (the Ministry).

The complainant is an employee of a facility operated by the Ministry. Another employee at the facility initiated a grievance proceeding against the Ministry, stating that administration and management had been discriminating against him and harassing him at his workplace.

A hearing was held before the Grievance Settlement Board (the GSB). The complainant, who was not a party to the grievance, was subpoenaed by the griever to attend this hearing. At the GSB hearing, the first witness to testify on behalf of the griever was a representative of the union to which the griever belonged.

During cross-examination, the witness was asked by the Ministry's counsel (the Counsel) if the complainant had been convicted of mischief for a certain reason. The witness responded affirmatively. The Counsel had been advised of this information by management's representative. At a subsequent GSB hearing regarding the same matter, the Counsel again asked a witness about the complainant's criminal conviction. The witness confirmed that the complainant had been convicted.

The complainant was concerned that the management representative, who was the Assistant Administrator at the facility where the complainant was employed, had accessed his personnel file prior to the GSB hearing, without his knowledge or consent. The complainant was also concerned that the disclosure of his personal information by the Assistant Administrator to the Counsel and the disclosure of the criminal conviction information by Counsel at the GSB hearing was contrary to the Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Did the Assistant Administrator access the complainant's personnel file prior to the GSB hearing, in compliance with Ontario Regulation 460?
- (C) Was the Assistant Administrator's disclosure of the complainant's personal information to the Counsel, in compliance with section 42 of the Act?
- (D) Was the Counsel's disclosure of the criminal conviction information at the GSB hearing prohibited by the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The information in question was found in the complainant's personnel file, specifically the fact that the complainant had been convicted of mischief for a particular reason.

It is our view that this information met the requirements of paragraph (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was personal information as defined in section 2(1) of the Act.

Issue B: Did the Assistant Administrator access the complainant's personnel file prior to the GSB hearing, in compliance with Ontario Regulation 460?

In his comments on the draft report, the complainant expressed his concern that the Assistant Administrator had accessed his personnel file and the criminal conviction information contained therein, contrary to the Act.

Section 4(2) of Ontario Regulation 460 states that:

Every head shall ensure that only those individuals who need a record for the performance of their duties shall have access to it.

The Ministry advised that, as part of his management responsibilities, the Assistant Administrator had previously reviewed the complainant's personnel file, including the criminal conviction information, further to complaints and grievances filed by the complainant himself. Consequently, the Assistant Administrator was already familiar with the contents of the complainant's personnel file prior to the grievance in question. The Ministry further stated that the Assistant Administrator was also aware of the complainant's criminal conviction because it was general knowledge throughout the facility.

However, the Ministry advised that prior to being interviewed by the Counsel for the grievance in question, the Assistant Administrator had accessed the complainant's personnel file, for information which related to the GSB hearing. According to the Ministry, the complainant was either a witness to or had knowledge of various incidents raised by the grievor in his grievance. The Ministry stated that the Assistant Administrator accessed the complainant's personnel file

in order to prepare for his interview with the Counsel and, ultimately, to assist the Counsel in preparing the Ministry's testimony at the hearing itself.

It is our view that the Assistant Administrator's duties included testifying at the GSB hearing and briefing the Counsel for that purpose. In order to perform these duties adequately, the Assistant Administrator needed to obtain any information that might be related to the GSB hearing. Accordingly, it is our view that the Assistant Administrator accessed the complainant's personnel file in compliance with section 4(2) of Ontario Regulation 460.

Conclusion: The Assistant Administrator accessed the complainant's personnel file prior to the GSB hearing in compliance with Ontario Regulation 460.

Issue C: Was the Assistant Administrator's disclosure of the complainant's personal information to the Counsel, in compliance with the section 42 of the Act?

In his comments on the draft report, the complainant expressed his concern that the Assistant Administrator had disclosed his personal information from his personnel file to the Counsel.

The Ministry advised that the Assistant Administrator disclosed the complainant's personal information during his interview with the Counsel, for the purpose of providing the Counsel with any information that would assist her in preparing for the GSB hearing.

Section 42(d) of the Act states that an institution shall not disclose personal information in its custody or under its control except,

where disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and where disclosure is necessary and proper in the discharge of the institution's functions;

It is our view that one of the Ministry's functions as an employer is to respond to grievances made by one of its employees, and to participate as a party to any litigation (such as a GSB hearing) arising from such grievances.

The Counsel was the Ministry employee who was responsible for representing the Ministry's interests at the GSB hearing. The Ministry took the position that in order to adequately prepare and determine what testimony should be presented at the GSB hearing, the Counsel had to be aware of any information which might be related to the hearing.

We accept the Ministry's submissions, and, as a result, it is our view that section 42(d) of the Act applies in the circumstances of this case. The Assistant Administrator disclosed the complainant's personal information to the Counsel, an employee of the Ministry, who needed this information in the performance of her duties, and the disclosure was necessary and proper in the discharge of one of the Ministry's functions, i.e., participating in a grievance hearing to which it was a party.

Conclusion: The Assistant Administrator's disclosure of the complainant's personal information to the Counsel, was in compliance with section 42 of the Act.

Issue D: Was the Counsel's disclosure of the criminal conviction information at the GSB hearing prohibited by the Act?

The Ministry has relied upon section 64(1) of the Act for its authority to disclose the criminal conviction information at the GSB hearing. The full text of section 64 states:

- (1) This Act does not impose any limitation on the information otherwise available by law to a party to litigation.
- (2) This Act does not affect the power of a court or a tribunal to compel a witness to testify or compel the production of a document.

We have reviewed the Ministry's submission regarding the application of section 64(1) of the Act. In this case, since the information was disclosed during the course of a witness's testimony, we believe that section 64(2) of the Act is the more relevant section to consider. Consequently, we have examined the application of section 64(2) of the Act, in the circumstances of this complaint.

In order for section 64(2) of the Act to apply, the tribunal, in this case the GSB, must have the power to compel a witness to testify. The Crown Employees Collective Bargaining Act (the CECBA) sets out the powers of the GSB. Section 19(2) of the CECBA states that the GSB has the same powers as a board of arbitration under section 11(11) of the CECBA. Section 11(11) of the CECBA states, in part:

A board has all the powers of the Tribunal,

- (a) to summon and enforce the attendance of witnesses and to compel them to give oral or written evidence on oath or affirmation;
- ...
- (c) to accept or exclude any oral testimony, document or other thing.

Therefore, the GSB has the statutory power to compel a witness to testify at a GSB hearing. Section 64(2) of the Act states that the Act does not affect this power.

In this case, the complainant's personal information was disclosed by the Counsel in the form of a question and confirmed by the witness. The Counsel had asked the question for the purpose of bringing the fact of the complainant's conviction to the attention of the GSB. In our view, by confirming the information contained in the Counsel's question, the disclosure became part of the witness's testimony. Since section 64(2) of the Act states that the Act cannot affect the power of a tribunal to compel a witness to testify, it is our view that, in this case, the Ministry's disclosure of the complainant's personal information during the GSB hearing did not violate the provisions of the Act.

Thus it is our view that section 64(2) of the Act applies in the circumstances of this case, and that the disclosure was not prohibited by the Act.

The complainant also questioned how the fact of his conviction was relevant to the matter being heard by the GSB. However, since we have found that section 64(2) applies to the disclosure of the complainant's personal information at the hearing, it is our view that we cannot make a determination under the Act regarding the relevance of the personal information to the issues in the proceedings before the GSB.

Conclusion: The disclosure of the complainant's personal information by the Counsel at the GSB hearing was not prohibited by the Act.

Other Matters

During the course of this investigation, the following matters were identified which we would like to bring to the Ministry's attention.

Record of Disclosure/Use - Sections 45 and 46

In his comments on the draft report, the complainant expressed his concern that no notation had been made in his personnel file stating that: his personal information had been accessed and by whom, what information had been removed, and for what purpose.

Section 46(1) of the Act states that a head shall attach or link to personal information in a personal information bank,

- (a) a record of any use of that personal information for a purpose other than a purpose described in clause 45(d); and
- (b) a record of any disclosure of that personal information to a person other than a person described in clause 45(e).

Section 2(1) of the Act states that the term "personal information bank" means a collection of personal information that is organized and capable of being retrieved using an individual's name or an identifying number or particular assigned to the individual. It is our view that the complainant's personnel file is a such a bank.

In this case, the Assistant Administrator disclosed the complainant's personal information to the Counsel so that Counsel could use the information to prepare the Ministry's testimony at the hearing. In compliance with section 46(1)(b) of the Act, the Ministry must attach a record of any disclosure to a person other than a person described in clause 45(e). Clause 45(e) states that the responsible minister shall publish at least once each year an index of all personal information banks, setting forth in respect of each personal information bank,

- (e) to whom the personal information is disclosed on a regular basis;

The Ministry advised our Office that the personal information bank in the "index", i.e. the

"Directory of Records", which included the personal information in question was the bank entitled Performance Management (page 18 of the 1994/95 Directory). Specifically, the bank states that an employee's name, performance contract, and appraisal of work performance may be used to manage employees' performance, and identify staff training needs. The information may be used by personnel/human resources staff, training and Employment Equity staff, line managers, and auditors. The Ministry stated that since the personal information maintained in this bank could be disclosed to line managers, it could be disclosed to the Assistant Administrator. However, the Assistant Administrator disclosed the personal information to the Counsel who, in our view, was not a person to whom the personal information was disclosed on a regular basis as indicated in the index.

In addition, section 46(3) states:

Where the personal information in a personal information bank under the control of an institution is used or disclosed for a use consistent with the purpose for which the information was obtained or compiled by the institution but the use is not one of the uses included under clauses 45 (d) and (e), the head shall,

- (a) forthwith notify the responsible minister of the use or disclosure, and
- (b) ensure that the use is included in the index.

In this case the complainant's personal information was disclosed to the Counsel so that Counsel could use the information to prepare the Ministry's testimony at the hearing. The complainant's personal information was obtained or compiled by the Ministry for the purpose of administering its employees. It is thus our view that the complainant's personal information was disclosed for a use consistent with the purpose for which the information was obtained or compiled, but the use was not one of the uses included under clauses 45(d) or (e) of the Act. Therefore, in our view, the Ministry should have attached a record of the disclosure to the complainant's personnel file, in accordance with section 46(1)(b) of the Act.

Disclosure Violates Spirit of the Act

While we have found that the disclosure at the GSB hearing was not prohibited by the Act, it is our view that the disclosure of this type of sensitive personal information in the context of a hearing, where the subject of the information was not a party to the litigation but rather a witness who was compelled to testify, violates the "spirit" of the privacy provisions of the Act.

Facsimile Transmission

We also wish to draw the Ministry's attention to its transmission of personal information by facsimile (fax). When responding to this complaint, the Ministry sent its submission to our Office by fax. Since this response contained personal information, we wished to remind the Ministry of the procedures recommended in our fax guidelines. Accordingly, in our draft report, we enclosed a copy of our two papers: "Guidelines on Facsimile Transmission Security, June 1989" and "Update on 1989 Guidelines on Facsimile Transmission Security, June 1990". We recommend that the Ministry review these guidelines and consider incorporating them into

its daily practices.

SUMMARY OF CONCLUSIONS

- The information in question was personal information as defined in section 2(1) of the Act.
- The Assistant Administrator accessed the complainant's personnel file prior to the GSB hearing, in compliance with Ontario Regulation 460.
- The Assistant Administrator's disclosure of the complainant's personal information to the Counsel was in compliance with section 42 of the Act.
- The disclosure of the complainant's personal information by the Counsel at the GSB hearing was not prohibited by the Act.

RECOMMENDATIONS

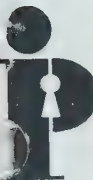
We recommend that,

1. As an interim measure, the Ministry attach or link the following to the complainant's and other employees' personal information in their personnel files: a record of any disclosure of personal information to a person other than one described in clause 45(e), in compliance with section 46(1) of the Act. Thus, until such time as this "new" use is included in the Directory of Records (see below), whenever personal information from an employee's personnel file is disclosed for the purpose of aiding the Ministry in preparing a response to a grievance or for other litigation matters, the Ministry shall attach a record of that disclosure.
2. The Ministry notify the responsible minister of the disclosure, and ensure that the "new" use is included in the 1995/96 Directory of Records, in compliance with section 46(3) of the Act.

Within six months of receiving this report, the Ministry should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendations.

Original Signed By: _____
Ann Cavoukian, Ph.D.
Assistant Commissioner

November 30, 1994
Date



Information and Privacy
Commissioner/Ontario
Commissionaire à l'information
et à la protection de la vie privée/Ontario

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INVESTIGATION REPORT

INVESTIGATION I94-030M

A BOARD OF EDUCATION

August 25, 1994



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a board of education (the Board).

The complainant had made a request for access to information under the Municipal Freedom of Information and Protection of Privacy Act (the Act), with the Board's Freedom of Information and Privacy Co-ordinator (Co-ordinator). The access request form contained the complainant's name, address, unlisted telephone number and a description of the general records requested. The complainant maintained that this information was disclosed by facsimile to the principal of the high school where the requested information was held. The complainant was concerned that both the transmission of this information by facsimile and its disclosure to the principal were contrary to the Act.

Further, the principal of the high school had telephoned the complainant and had asked why he required the information and if he had a student in the school. The complainant made it clear that he did not wish to discuss the matter, and did not answer the questions. The complainant was concerned that if the principal had collected this information, the collection would have been contrary to the Act.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Was the Board's disclosure of the personal information in accordance with section 32 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (d) the address, telephone number, fingerprints or blood type of the individual,

- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The access request form completed by the complainant included the complainant's name, address, and unlisted telephone number.

It is our view that this information met the requirements of paragraphs (d) and (h) of the definition of personal information, in section 2(1) of the Act.

Conclusion: The information in question was personal information as defined in section 2(1) of the Act.

Issue B: Was the Board's disclosure of the personal information in accordance with section 32 of the Act?

The complainant had made his request for information under the provisions of the Act, and had submitted it directly to the Co-ordinator's office. The information requested by the complainant was the number of teachers teaching the Ontario Academic Credit (OAC) course in Finite Mathematics at a particular school and the names of those teachers. Also requested was a copy of the most recent final examinations administered in the OAC Finite Mathematics course at that school.

The Board established that the information requested by the complainant was classified as general information maintained in "general files". The Board advised that it had a set procedure that was to be followed when such files were requested.

The Board pointed out that this procedure was outlined in a pamphlet entitled "Freedom of Information and Protection of Individual Privacy - Information about the (named) Board of Education", and in the forward to its "Directory of General Files and Personal Information Banks" (the Directory). The Board maintained that if the complainant had "... followed the process as outlined in the pamphlet and the directory, there would have been no problem".

We examined the pamphlet. It described two procedures for obtaining information from the Board. One could obtain information under previously established practices of the Board, or under a formal request for information under the Act.

The first procedure was described under the heading "Directory of Board Records". In this section, the Board stated that it had published the Directory which described the organization and responsibilities of each department, as well as the records maintained. The Board further stated:

Persons seeking access to recorded information about the (named) Board of Education should consult the directory to determine the location (department/school) of the desired information and then contact the person listed in the directory.

The person listed in the directory would then attend to the information requested. The pamphlet went on to state that if the "requester" was denied "access to information" and wished to request it under the Act, he or she was to contact the Co-ordinator, in order to complete the "required application".

The second procedure was described under the heading "Handling Requests for Information". In this section, the Board was referring to requests for information made under the Act. The Board stated, in the pamphlet, that the Act was not meant to change the established practice of granting information except to further ensure that private information was protected. The Board further stated that: **"Employees must not grant or deny access to a record that has been requested under the Act"**, and that any time a request was received anywhere within the Board, the request was to be forwarded to the Co-ordinator. The Co-ordinator would then process the request.

Thus, the Board made a distinction between obtaining information through its established procedure versus making a request for information under the Act. It is our view that an individual had the choice of obtaining general records from the Board by using either of the Board's procedures. The Board maintained, however, that the complainant should have followed its established procedure by contacting the school principal directly rather than the Co-ordinator.

It is our view that once an individual had elected to make a request for information under the Act, the second procedure outlined in the pamphlet should have been followed. Therefore, although the Directory established that the information he sought was located at a particular high school and that the designated contact person was the principal, the complainant appropriately made his request directly to the Co-ordinator.

Under the Act, an institution shall not disclose personal information except in the circumstances outlined in section 32.

The Board stated that it had relied specifically on section 32(d) of the Act for the disclosure of the complainant's personal information. Section 32(d) states:

An institution shall not disclose personal information in its custody or under its control except,

- (d) if the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and if the disclosure is necessary and proper in the discharge of the institution's functions;

When the Co-ordinator received the complainant's access request under the Act, she forwarded the complainant's completed access request form to the principal of the school where the requested information was held. This form contained the complainant's personal information i.e., his name, address and unlisted telephone number.

One of the duties of the principal was to assist in the processing of the access request by compiling the records responsive to the request. However, it is our view that it was not necessary for the principal to have the complainant's personal information in order for him to perform this duty. It is, therefore, our view that the Board's disclosure of the complainant's personal information to the principal was not in accordance with section 32(d) of the Act.

We examined the remaining provisions of section 32 and found that none applied.

Conclusion: The Board's disclosure of the complainant's personal information was not in accordance with section 32 of the Act.

Other Matters

We wish to draw attention to the following:

Attempted Collection of Personal Information

As previously mentioned, when the principal received the access request from the Co-ordinator, he telephoned the complainant and asked why he required the requested information and if he had a student in the school. Since the complainant did not wish to discuss the matter, he did not answer the questions. The complainant was concerned that had he answered the questions, the Board's collection of this personal information would have contravened the Act.

Section 28(2) of the Act states:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or **necessary to the proper administration of a lawfully authorized activity.** (emphasis added)

In our view, the processing of a request for access to information under the Act is a lawfully authorized activity. However, it is also our view that the principal would not have required the additional information in assisting in the processing of the request and therefore, the collection of this personal information would not have been in accordance with section 28(2) of the Act, as it would not have been "necessary" to the proper administration of a lawfully authorized activity.

Facsimile Transmission of the Access Request

Since this complaint concerned the disclosure of personal information through the facsimile transmission of the access request form, we wished to remind the Board of our facsimile transmission guidelines. Accordingly, we enclosed with our draft report, a copy of the following documents: "Guidelines on Facsimile Transmission Security, June 1989" and an "Update on 1989 Guidelines on Facsimile Transmission Security, June 1990".

"Freedom of Information and Protection of Individual Privacy" Pamphlet

In Issue B, we reviewed the two procedures that the Board had described in its pamphlet for obtaining information under its custody and control. We found that the Board made a distinction between obtaining information through its established procedure versus making a request for information under the Act. However, the distinction was not very clear due to the language the Board used in describing its established procedure. For example, the Board used the terms "requester" and "access to information"; terms which are normally used when referring to the access procedure under the Act. And, when the Board did in fact refer to the access procedure under the Act, it did so by using the term "required application", which is not normally associated with the Act.

It is also our view that some of the confusion regarding the two procedures might have stemmed directly from the title of the pamphlet itself, since one might assume from its title that all of the pamphlet's contents dealt with procedures under the Act.

Further, in its description of the sections of the Act that concern collection, use, disclosure, and retention of personal information, the pamphlet listed as a general rule, three exceptions relating to the use and disclosure of personal information. Under the Act, there are more than three exceptions allowing for the disclosure of personal information and different exceptions apply to use and to disclosure.

SUMMARY OF CONCLUSIONS

- The information in question was personal information as defined in section 2(1) of the Act.
- The Board's disclosure of the complainant's personal information was not in accordance with section 32 of the Act.

RECOMMENDATIONS

1. The Board should take steps to ensure that when it receives an access request under the Act for general records maintained in another location, the written request is not sent to the other location by facsimile or other means, unless all personal identifiers have been removed (e.g., name and address). We would like to refer the Board to the enclosed copy of "IPC Practices", entitled "Maintaining the Confidentiality of Requesters and Privacy Complainants".
2. The Board should consider updating its pamphlet to ensure that its procedures for obtaining information in its custody and control are more clearly defined. Specifically, the Board should ensure that the language which is normally associated with making an access request under the Act is not used to describe the Board's alternative procedure for obtaining general records. Reference should also be made to the Act rather than Bill 49, when discussing the procedure for an access request under the Act.

The Board should consider other changes to the pamphlet such as a clarification of the use and disclosure exceptions.

3. The Board should remind staff involved in the processing of requests for general records (either under the Act or through the Board's "established practices") to collect only personal information which is necessary to process the request.

Original Signed by: _____
Susan Anthistle
Compliance Review Officer

August 25, 1994
Date



Information and Privacy
Commissioner/Ontario
Commissionaire à l'information
et à la protection de la vie privée/Ontario

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INVESTIGATION REPORT

INVESTIGATION I94-030P

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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of the Solicitor General and Correctional Services (the Ministry).

The complainant had been suspended and had subsequently been dismissed from his employment with the Ministry. As a result of his suspension and dismissal, the complainant had filed two grievances with the Ministry which had gone before the Grievance Settlement Board (the GSB).

During the course of the grievance proceedings, the complainant had moved to another province and had applied for an employment position with a government department in that province (the Department). The Department had written to a superintendent at the Ministry facility where the complainant had been employed (the Superintendent), requesting certain information about the complainant and his employment with the Ministry. The Superintendent had responded by letter to the Department's questions about the complainant.

The complainant was concerned that the disclosure of the information in the Superintendent's letter to the Department had been contrary to the Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Did section 37 of the Act apply to the personal information? If not,
- (C) Was the disclosure of the personal information in accordance with section 42 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The Superintendent's letter to the Department included information about the complainant's employment with the Ministry - his date of hire, date of transfer, and the date his employment was terminated. It included the title and responsibilities of the complainant's employment position. It also included the reason for the complainant's dismissal from the Ministry, and the Superintendent's opinion about whether he would rehire the complainant.

It is our view that the complainant's date of hire, date of transfer, and the date his employment was terminated was information which met the requirements of paragraph (b) of the definition of personal information in section 2(1) of the Act.

It is also our view that the reason for the complainant's dismissal from the Ministry, and the Superintendent's opinion about whether he would rehire the complainant was information which met the requirements of paragraphs (g) and (h) of the definition of personal information in section 2(1) of the Act.

In previous Orders issued by our Office, we found that the title and responsibilities of a position of employment was not the personal information of the employee. In this case, it is also our view that the complainant's job title and job responsibilities was not personal information as defined in section 2(1) of the Act.

Conclusion: The complainant's date of hire, date of transfer and the date the complainant's employment was terminated, the reason for the complainant's dismissal, and the Superintendent's opinion about whether he would rehire the complainant was personal information as defined in section 2(1) of the Act.

The complainant's job title and job responsibilities was not personal information as defined in section 2(1) of the Act.

Issue B: Did section 37 of the Act apply to the personal information?

The Ministry submitted that it disclosed the complainant's personal information because it had already been made public. The Ministry stated that the personal information was a matter of public record because the complainant's suspension and subsequent dismissal from the Ministry had been the subjects of an arbitration hearing before the GSB. The proceedings before the GSB were open to all members of the public, including media representatives, and the final written decision of the GSB was a publicly available document.

Section 37 of the Act states:

This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public.

It is our view that under section 37 of the Act, personal information maintained by an institution can be excluded from the application of Part III of the Act only if the personal information is maintained by that institution for the purpose of creating a record which is available to the general public. In this case, the Ministry could not be said to have been maintaining the complainant's personal information **specifically** for the purpose of creating a record that was available to the general public. Therefore, it is our view that the Ministry could not rely on section 37 to exclude the complainant's personal information from the privacy provisions of Part III of the Act.

Conclusion: Section 37 of the Act did not apply to the personal information.

Issue C: Was the disclosure of the personal information in accordance with section 42 of the Act?

Under the Act, personal information in the custody or under the control of an institution cannot be disclosed except in the specific circumstances outlined in section 42.

The Ministry submitted that the disclosure of the complainant's personal information to the Department was in accordance with section 42(b) of the Act. Section 42(b) states that an institution shall not disclose personal information in its custody or under its control except,

where the person to whom the information relates has identified that information in particular and consented to its disclosure.

The Ministry informed us that, according to the Department, it was the usual practice of the Department to advise prospective employees during the recruitment interview that employment references would be requested from whatever sources were deemed appropriate by the Department. In addition, the Department had prospective employees, like the complainant, fill out an employment application form. The application contained a section entitled "References" which requested that applicants "name three people who know you and your capabilities and to whom we may refer in confidence". Directly below this section on the form was a notation which stated: "Note-information may be requested from sources other than those listed above".

The Ministry stated that the complainant had implicitly consented to the disclosure of his personal information by applying for employment with the Department and signing the employment application form. The Ministry submitted that the disclosure was thus in accordance with section 42(b) of the Act.

In determining whether section 42(b) of the Act applied, we considered whether the complainant had identified the personal information "in particular" and had consented to its disclosure.

The complainant had been required to complete the employment application form in order to be considered for a position of employment with the Department. The complainant had not provided the name of the Superintendent as a reference. He was not aware that the Department had contacted the Superintendent regarding his past employment until after this contact had been made. In our view, although he had signed the employment application form which stated that "information may be requested from sources other than those listed above", it cannot be said that the complainant had identified any specific information that might be obtained from these other sources. Therefore, we cannot conclude that the complainant had identified the personal information disclosed in the Ministry's letter, "in particular", nor that he had consented to its disclosure. It is thus our view that the Ministry could not rely on section 42(b) of the Act for its disclosure of the complainant's personal information.

The Ministry also stated that the disclosure of the complainant's personal information was for a "consistent purpose" within the meaning of section 42(c) of the Act. Section 42(c) of the Act states that an institution shall not disclose personal information in its custody or under its control except "for the purpose for which it was obtained or compiled or for a consistent purpose". Section 43 of the Act further provides that:

Where personal information has been collected directly from the individual to whom the information relates, the purpose of a use or disclosure of that information is a consistent purpose under clauses 41(b) and 42(c) only if the individual might reasonably have expected such a use or disclosure.

The Ministry stated that the complainant should have reasonably expected that his prospective employer would need to verify that the information on his employment application form and resume was both factual and truthful. With reference specifically to the disclosure of the Superintendent's opinion of whether the complainant was suitable for rehire, the Ministry stated that the complainant should have reasonably expected that his prospective employer would want to know this type of information.

In our view, the Ministry had compiled the complainant's date of hire, date of transfer, and the date his employment was terminated, the reason for his termination, and the Superintendent's opinion about the complainant's suitability for rehire, for internal human resources purposes, such as employee administration and performance evaluation. The Ministry subsequently disclosed this personal information to the Department for the purpose of responding to the Department's request for information about the complainant's employment with the Ministry.

Although the complainant had not identified the Superintendent as a reference on the employment application form, it is our view that by completing the form he was aware that information could be requested from sources other than those he had listed and that he might reasonably have expected that one of the sources would be an appropriate official at his last place of employment at the Ministry.

Further, it is our view that the complainant might also reasonably have expected that in such a contact, the Ministry would disclose information about his employment, including the reason for his termination and his suitability for rehire. Therefore, in our view, the Ministry's disclosure of the complainant's personal information was for a purpose that was "consistent" with the purpose for which the information had been compiled. The disclosure was, thus, in accordance with section 42(c) of the Act.

Conclusion: The Ministry's disclosure of the complainant's personal information was in accordance with section 42 of the Act.

SUMMARY OF CONCLUSIONS

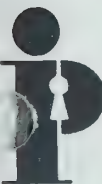
- The complainant's date of hire, date of transfer and the date the complainant's employment was terminated, the reason for the complainant's dismissal, and the Superintendent's opinion about whether he would rehire the complainant was personal information as defined in section 2(1) of the Act.

The complainant's job title and job responsibilities was not personal information as defined in section 2(1) of the Act.

- Section 37 of the Act did not apply to the personal information.
- The Ministry's disclosure of the complainant's personal information was in accordance with section 42 of the Act.

Original Signed By: _____
Susan Anthistle
Compliance Review Officer

October 12, 1994
Date



Information and Privacy
Commissioner/Ontario
Commissionaire à l'information
et à la protection de la vie privée/Ontario

CATION

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INVESTIGATION REPORT

INVESTIGATION I94-037M

A POLICE SERVICES BOARD



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a police services board (the Police).

The complainant had applied for a renewal of a Firearms Acquisition Certificate (FAC) with the Police. Around the time that the complainant had made the application for renewal, he underwent elective surgery. Due to the nature of the surgery, the Ministry of Transportation temporarily suspended his driving privileges.

During the course of processing the complainant's renewal application for the FAC, the Police did a check with the Canadian Police Information Centre (CPIC). The complainant's CPIC printout indicated that his driving privileges had been suspended for medical reasons. When questioned by the Police as to why his driver's licence had been suspended for medical reasons, the complainant said that he had undergone surgery and was recovering. The Police then collected from the complainant a copy of a letter containing his medical information, written by his doctor. The complainant then received his FAC.

The complainant was concerned that the collection of his medical information by the Police was contrary to the Municipal Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined by section 2(1) of the Act? If yes,
- (B) Did the Police collect the personal information in accordance with section 28(2) of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined by section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The information in question was contained in a letter written by the complainant's doctor. It included the complainant's name, address, medical information, and information regarding the duration of his disability. It also identified the division of the hospital associated with the complainant's surgery and doctor, thereby identifying the nature of his surgery.

It is our view that this information met the requirements of paragraph (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was personal information as defined in section 2(1) of the Act.

Issue B: Did the Police collect the personal information in accordance with section 28(2) of the Act?

Section 28(2) of the Act states:

(2) No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or **necessary to the proper administration of a lawfully authorized activity**. (emphasis added)

The Police have stated that the Criminal Code of Canada is the lawful authority for the collection of the complainant's personal information. Section 106(1) of the Criminal Code of Canada states:

Where a firearms officer who has received an application for a firearms acquisition certificate and the fee prescribed by regulation does not, after considering the information contained in the application, any further information that is submitted to the firearms officer pursuant to a requirement under subsection (9) and such other information as may reasonably be regarded as relevant to the application, have notice of any matter that may render it desirable in the interests of the safety of the applicant or of any other person that the applicant should not acquire a firearm, the firearms officer shall, subject to subsection (2), and after at least twenty-eight days have elapsed since the application was received, issue a firearms acquisition certificate to the applicant.

Section 106(9) of the Criminal Code of Canada states:

A firearms officer who has received an application for a firearms acquisition certificate may require the applicant to submit such further information in addition to that included in the application as may reasonably be regarded as relevant for the purpose of determining whether there is any matter that might render it dangerous for the safety of the applicant or of any other person if the applicant acquired a firearm.

It is our view that processing an application for an FAC, with a view to granting or denying the FAC, is a lawfully authorized activity.

It is also our view that the collection of further information that is relevant to making a determination regarding approval or denial of the FAC, is necessary to the proper administration of processing the application for the FAC.

In this case, the Firearms Clerk was aware that the complainant's driving privileges had been suspended for medical reasons. In consideration of the safety of the applicant, i.e. the complainant, and any other person, the Police were required to ensure that there was no reason why the complainant should not acquire a firearm. In our view, in order to do this, it was necessary for the Police to obtain more specific information regarding the medical reasons which were the cause of the suspension of the complainant's driver's license.

Therefore, in our view, the Police's collection of the medical note, containing the complainant's personal information, was necessary to the proper administration of the lawfully authorized activity of processing, and approving or denying, the application for the FAC. It is, thus, our view that the collection of the complainant's personal information was in accordance with section 28(2) of the Act.

Conclusion: The collection of the complainant's personal information was in accordance with section 28(2) of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was personal information as defined in section 2(1) of the Act.
- The collection of the personal information was in accordance with section 28(2) of the Act.

Original Signed by:
Susan Anthistle
Compliance Review Officer

August 22, 1994
Date

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-I 52



Information and Privacy
Commissioner/Ontario
Commissionnaire à l'information
et à la protection de la vie privée/Ontario

INVESTIGATION REPORT

INVESTIGATION I94-039M

A SEPARATE SCHOOL BOARD

March 13, 1995



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a named separate school board (the Board).

The complainants' child was a student attending one of the Board's schools. The child was referred by the Board to a Special Education Identification, Placement and Review Committee (the Committee) for an assessment. The Committee identified exceptional pupils and recommended suitable placements for them.

The complainants consented to the assessment because they wished to establish that their child had chemical sensitivities which affected his learning ability. The complainants hoped that the Committee would determine that a chemical-free environment would be the most suitable placement for their child. The complainants gave the Board written permission to contact their child's clinicians to collect their child's medical and mental health information.

An assessment was subsequently conducted. The child was identified as exceptional and recommendations were made with respect to a suitable placement for him. The complainants, however, did not agree with the Committee's determination and recommendations, and subsequently filed an appeal. A Special Education Appeal Board (the Appeal Board) was established to hear the appeal.

After the complainants appealed the Committee's determination, they informed the Board's Director of Education, by letter, that all medical and mental health information pertaining to their child would be treated by his clinicians as confidential, thus revoking their permission for the Board to collect any further information from the clinicians. A Board psychologist subsequently made an inquiry of one of the child's clinicians. He asked the clinician's secretary whether a status report on the child was available, and was informed that the clinician had not seen the child lately and that there were no reports.

The complainants maintained that the Board had collected their child's personal information without their consent, and that the collection was not in compliance with the Municipal Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Was the Board's collection of the child's personal information in compliance with section 28(2) of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act states in part,

"personal information" means recorded information about an identifiable individual, including,

- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The information in question which was provided to the Board's doctor by the clinician's office, was that no medical report about the child was available because the clinician had not seen the child.

It is our view that this information met the requirements of paragraph (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was personal information as defined in section 2(1) of the Act.

Issue B: Was the Board's collection of the child's personal information in compliance with section 28(2) of the Act?

The Board submitted that its collection of the child's personal information was in compliance with section 28(2) of the Act. This section states:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or **necessary to the proper administration of a lawfully authorized activity**. [emphasis added]

Regulation 305 of the Education Act sets out the powers and procedures of the Committee and Appeal Board. Section 4(1) of Regulation 305 indicates that a parent of a pupil who disagrees with a determination made by the Committee may give a written notice of appeal of the determination of the Committee and the Board shall appoint an Appeal Board to deal with the appeal.

In this case, after the Committee had made its decisions regarding the complainant's child, further to section 4(1) of Regulation 305, the complainants requested an appeal on the grounds of the decision of the Committee, and subsequently, the Board established the Appeal Board to hear the appeal.

The complainants indicated that it was their belief that when they had revoked their consent to the Committee to consult with their child's clinician, this would have prevented the Board from obtaining any further information about their child. The complainants further stated that it was their view that their child had missed an entire year of school, much to his detriment, as a result of the Board's collection of his personal information.

Section 28(2) of the Act does not list consent as one of the conditions under which personal information may be collected. Further, while section 2(3)(a) of Regulation 305 of the Education Act requires the Committee to obtain a parent's written permission before obtaining and considering a child's health and psychological assessment, section 7 of the Regulation, the comparative section at the appeal stage, is silent on this point. Therefore, there is no specific requirement for parental consent for collecting further information about a child at the appeal stage.

The Board advised that the Appeal Board relies on the parties, i.e. the Board and the appellants, to provide the information necessary to make its decision. Section 7 of Regulation 305 of the Education Act states in part:

- (8) **Any person who in the opinion of an Appeal Board may be able to contribute information with respect to the matters before the Appeal Board shall be invited to attend the discussion** and the discussion shall be conducted in an informal manner. (emphasis added)
- (9) **Where in the opinion of an Appeal Board all the opinions, views and information that bear upon the matters under appeal have been presented to the Appeal Board, the Appeal Board shall adjourn the discussion and within three days thereafter may, ...** (emphasis added)

The Board informed us that, at the time of its collection of the child's information, its staff were preparing for the complainants' appeal of the Committee's determination. The Board stated that, as part of the appeal process, its psychologist, in calling the clinician, "was merely attempting to confirm if the results of the psycho-educational assessment might be available in time for the appeal hearing."

The Board further stated that results from a psycho-educational assessment were regularly used as support information to the Appeal Board's deliberations when reviewing the recommendations of the Committee.

It is our view that further to section 7 of Regulation 305 of the Education Act, the parties to the appeal hearing should be permitted to place the relevant information before the Appeal Board to ensure that it will be in a position to make an informed decision.

It is also our view that the Board's preparation for the appeal hearing before the Appeal Board was a lawfully authorized activity of the Board. In this case, the Board had collected only the information that a report was not available because the clinician had not seen the child. No specific medical details were collected. As part of its preparations for the appeal hearing, it was necessary for the Board to confirm whether or not the report of the psycho-educational assessment would be available to the Appeal Board, since this information could be relevant to the Appeal Board's deliberations.

Therefore, in the circumstances of this case, it is our view that the Board's collection of the child's personal information was necessary to the proper administration of a lawfully authorized activity, and was thus in compliance with section 28(2) of the Act.

Conclusion: The Board's collection of the child's personal information was in compliance with section 28(2) of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was personal information as defined in section 2(1) of the Act.
- The Board's collection of the child's personal information was in compliance with section 28(2) of the Act.

Original Signed by: _____
Ann Cavoukian, Ph.D.
Assistant Commissioner

March 13, 1995
Date



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Commissioner/Ontario
Commissionaire à l'information
et à la protection de la vie privée/Ontario

INVESTIGATION REPORT

INVESTIGATION I94-039M

A SEPARATE SCHOOL BOARD

March 13, 1995



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a named separate school board (the Board).

The complainants' child was a student attending one of the Board's schools. The child was referred by the Board to a Special Education Identification, Placement and Review Committee (the Committee) for an assessment. The Committee identified exceptional pupils and recommended suitable placements for them.

The complainants consented to the assessment because they wished to establish that their child had chemical sensitivities which affected his learning ability. The complainants hoped that the Committee would determine that a chemical-free environment would be the most suitable placement for their child. The complainants gave the Board written permission to contact their child's clinicians to collect their child's medical and mental health information.

An assessment was subsequently conducted. The child was identified as exceptional and recommendations were made with respect to a suitable placement for him. The complainants, however, did not agree with the Committee's determination and recommendations, and subsequently filed an appeal. A Special Education Appeal Board (the Appeal Board) was established to hear the appeal.

After the complainants appealed the Committee's determination, they informed the Board's Director of Education, by letter, that all medical and mental health information pertaining to their child would be treated by his clinicians as confidential, thus revoking their permission for the Board to collect any further information from the clinicians. A Board psychologist subsequently made an inquiry of one of the child's clinicians. He asked the clinician's secretary whether a status report on the child was available, and was informed that the clinician had not seen the child lately and that there were no reports.

The complainants maintained that the Board had collected their child's personal information without their consent, and that the collection was not in compliance with the Municipal Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Was the Board's collection of the child's personal information in compliance with section 28(2) of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act states in part,

"personal information" means recorded information about an identifiable individual, including,

- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The information in question which was provided to the Board's doctor by the clinician's office, was that no medical report about the child was available because the clinician had not seen the child.

It is our view that this information met the requirements of paragraph (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was personal information as defined in section 2(1) of the Act.

Issue B: Was the Board's collection of the child's personal information in compliance with section 28(2) of the Act?

The Board submitted that its collection of the child's personal information was in compliance with section 28(2) of the Act. This section states:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or **necessary to the proper administration of a lawfully authorized activity**. [emphasis added]

Regulation 305 of the Education Act sets out the powers and procedures of the Committee and Appeal Board. Section 4(1) of Regulation 305 indicates that a parent of a pupil who disagrees with a determination made by the Committee may give a written notice of appeal of the determination of the Committee and the Board shall appoint an Appeal Board to deal with the appeal.

In this case, after the Committee had made its decisions regarding the complainant's child, further to section 4(1) of Regulation 305, the complainants requested an appeal on the grounds of the decision of the Committee, and subsequently, the Board established the Appeal Board to hear the appeal.

The complainants indicated that it was their belief that when they had revoked their consent to the Committee to consult with their child's clinician, this would have prevented the Board from obtaining any further information about their child. The complainants further stated that it was their view that their child had missed an entire year of school, much to his detriment, as a result of the Board's collection of his personal information.

Section 28(2) of the Act does not list consent as one of the conditions under which personal information may be collected. Further, while section 2(3)(a) of Regulation 305 of the Education Act requires the Committee to obtain a parent's written permission before obtaining and considering a child's health and psychological assessment, section 7 of the Regulation, the comparative section at the appeal stage, is silent on this point. Therefore, there is no specific requirement for parental consent for collecting further information about a child at the appeal stage.

The Board advised that the Appeal Board relies on the parties, i.e. the Board and the appellants, to provide the information necessary to make its decision. Section 7 of Regulation 305 of the Education Act states in part:

- (8) **Any person who in the opinion of an Appeal Board may be able to contribute information with respect to the matters before the Appeal Board shall be invited to attend the discussion** and the discussion shall be conducted in an informal manner. (emphasis added)
- (9) **Where in the opinion of an Appeal Board all the opinions, views and information that bear upon the matters under appeal have been presented to the Appeal Board,** the Appeal Board shall adjourn the discussion and within three days thereafter may, ... (emphasis added)

The Board informed us that, at the time of its collection of the child's information, its staff were preparing for the complainants' appeal of the Committee's determination. The Board stated that, as part of the appeal process, its psychologist, in calling the clinician, "was merely attempting to confirm if the results of the psycho-educational assessment might be available in time for the appeal hearing."

The Board further stated that results from a psycho-educational assessment were regularly used as support information to the Appeal Board's deliberations when reviewing the recommendations of the Committee.

It is our view that further to section 7 of Regulation 305 of the Education Act, the parties to the appeal hearing should be permitted to place the relevant information before the Appeal Board to ensure that it will be in a position to make an informed decision.

It is also our view that the Board's preparation for the appeal hearing before the Appeal Board was a lawfully authorized activity of the Board. In this case, the Board had collected only the information that a report was not available because the clinician had not seen the child. No specific medical details were collected. As part of its preparations for the appeal hearing, it was necessary for the Board to confirm whether or not the report of the psycho-educational assessment would be available to the Appeal Board, since this information could be relevant to the Appeal Board's deliberations.

Therefore, in the circumstances of this case, it is our view that the Board's collection of the child's personal information was necessary to the proper administration of a lawfully authorized activity, and was thus in compliance with section 28(2) of the Act.

Conclusion: The Board's collection of the child's personal information was in compliance with section 28(2) of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was personal information as defined in section 2(1) of the Act.
- The Board's collection of the child's personal information was in compliance with section 28(2) of the Act.

Original Signed by: _____
Ann Cavoukian, Ph.D.
Assistant Commissioner

March 13, 1995
Date



Information and Privacy
Commissioner/Ontario
Commissionaire à l'information
et à la protection de la vie privée/Ontario

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INVESTIGATION REPORT

INVESTIGATION I94-040M

A SEPARATE SCHOOL BOARD

October 20, 1994



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a separate school board (the Board).

The complainant is a Roman Catholic who supports the public school system. She received a letter from the Board advising her that under the Education Act, she was entitled to direct the education portion of her property tax to the Board. Enclosed with the letter was a form which the complainant could sign if she wished to support the separate rather than the public school system.

The complainant believed that the Board had taken copies of assessment records at "City Hall" in order to use the personal information they contained to solicit tax support from Roman Catholics who did not support the Board. She objected specifically to the Board's use of her personal information for what she believed was for the purpose of soliciting tax dollars from her and for questioning her decision to support the public school system. She believed that the Board's use of her personal information was not in compliance with the Municipal Freedom of Information and Protection of Privacy Act (the Act).

Under section 14 of the Assessment Act, the assessment commissioner for each assessment region is required to prepare an assessment roll that includes such information as the name and surname of any person liable to assessment (i.e. a ratepayer); his/her religion, if Roman Catholic; and whether he or she is a public or separate school supporter. Under section 16 of the Assessment Act, the assessment commissioner is required to prepare a list indicating the school support of each ratepayer in each municipality in the assessment region and to deliver it to each school board in the municipality. It was information about the complainant from such a list (the school list) that Board used when it wrote to her.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Was the Board's use of the personal information in compliance with section 31 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act states in part:

"personal information" is recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
...
- (d) the address, telephone number, fingerprints or blood type of the individual,
...
- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The school list contained the complainant's name, address, gender, and religion. It included the information that she was a supporter of the public school system and other details about her.

In our view, this information satisfied the requirements of paragraphs (a), (d), and (h) of the definition of "personal information" in section 2(1) of the Act.

Conclusion: The information in question was personal information as defined in section 2(1) of the Act.

Issue B: Was the Board's use of the personal information in compliance with section 31 of the Act?

Under the Act, personal information in the custody or control of an institution cannot be used except in the specific circumstances outlined in section 31. The Board submitted that the complainant's personal information was used in accordance with sections 31(a) and (b) of the Act.

Section 31(a) states that an institution shall not use personal information in its custody or under its control "except if the person to whom the information relates has identified that information in particular and has consented to its use."

It was the Board's view that there existed an implicit consent for the use of religious information in the manner in which the Board had used it. The Board stated that the public had authorized the legislature to require ratepayers to provide such information for inclusion in the assessment roll. The Board further stated that since there was no purpose for the collection of the information (included on the school list) other than for use by school boards, this "type of use has been consented by the electorate of Ontario."

It is our view, however, that section 31(a) of the Act did not apply to the circumstances of this case, since it could not be said that with respect to the personal information used by the Board, the complainant had identified it "in particular" and had consented to its use.

The Board submitted that section 31(b) of the Act was also applicable. Section 31(b) states that an institution shall not use personal information in its custody or under its control "except for the purpose for which it was obtained or compiled or for a consistent purpose."

The Board submitted that the underlying principle of the assessment system is to allow both the public and separate school systems to compete for support from Roman Catholic ratepayers. It was the Board's view that Roman Catholic ratepayers have the right to form separate school boards under section 80 of the Education Act. Further, Section 106 of the Education Act provides that every person who pays rates as a separate school supporter is exempt from public payment of taxes for public school purposes.

Section 80 of the Education Act states in part:

A public meeting of persons desiring to establish a separate school zone may be convened by,

- (a) not fewer than five heads of families, being Roman Catholics and being householders or freeholders resident within a municipality...

Section 106 of the Education Act states in part:

- (1) Every person paying rates in a separate school zone on property that the person occupies as owner or tenant or on unoccupied property that the person owns, who personally or by his or her agent, on or before the 30th day of September in any year, gives to the clerk of the municipality notice in writing that the person is a Roman Catholic and wishes to be a separate school supporter, is exempt from the payment of all rates imposed on such property in the separate school zone for public school purposes ...

The Board stated that the ratepayer information is collected by the assessment commissioner and then passed on to the school boards via the school lists, to enable boards to advise Roman Catholics of their options (ie., that they could give their support to either the public or separate school system). The Board referred to section 16 of the Assessment Act.

Section 16 of the Assessment Act states in part:

(1) The assessment commissioner shall, in each year, prepare a list showing the school support of every inhabitant who is entitled to direct taxes for school support purposes for each municipality or locality in the commissioner's assessment region and shall deliver the list to the secretary of each school board in the municipality or the locality on or before the 30th day of September of each year.

...

(3) Any person may apply to the assessment commissioner to have that person's name included or altered in the assessment roll as a separate school supporter; if the person is a Roman Catholic, or a public school supporter and the assessment commissioner may make the addition or alteration.

...

(5) At the request of the secretary of the school board, the assessment commissioner may deliver the list referred to in subsection (1) in a format that will facilitate the use of mechanical or electronic means in the printing, reproduction or **other use** of the list. (emphasis added)

It was the Board's view that since the Assessment Act specifically provided for the Board to have and to use the information contained in the school list, the Board had the right and responsibility to use this information to advise Roman Catholics of their right to direct their funds to the separate school system, if they so wished.

The Board stated that the information on the school list "is not used for any other purpose... information respecting religion has been used only for the purpose for which it was obtained, the ascertainment of potential supporters..." It was the Board's view that it was not soliciting support "per se". "Ratepayers cannot be assumed to be familiar with their rights under the Education Act and the Assessment Act. What we do is to use the information .. to inform Catholic ratepayers of their rights..."

The Board also advised that in its current form letter, a paragraph has been added which clarifies that the issue of separate school support is a voluntary undertaking. Ratepayers are told that if they choose not to change their support to the separate system, to disregard the attached forms.

We have considered both the Board's representations and the relevant legislation. It is our view that in this case, the Board had obtained the complainant's personal information on the school list for the purpose of ascertaining if the information that the complainant was a supporter of the public school system was correct and to advise her that she had the option of directing her taxes to the separate school system. The Board then used this personal information for the very same purpose. It is, therefore, our view that the Board's use of the complainant's personal information was in compliance with section 31(b) of the Act, for the same purpose for which it had been obtained.

Conclusion: The Board's use of the personal information was in compliance with

section 31 of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was "personal information" as defined in section 2(1) of the Act.
- The Board's use of the personal information was in compliance with section 31 of the Act.

Original Signed by:
Susan Anthistle
Compliance Review Officer

October 20, 1994
Date

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-J56



Information and Privacy
Commissioner/Ontario
Commissionaire à l'information
et à la protection de la vie privée/Ontario

INVESTIGATION REPORT

INVESTIGATION I94-048M

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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a regional police force (the Police).

The complainant, a private in the Canadian Armed Forces, was driving a military vehicle when he was stopped by a police officer for a traffic violation. The Police Officer requested the complainant's name, birth date, home address and driver's licence. The complainant provided his name, birth date, military base address and his military driver's licence, Form DND-404. The Police Officer requested the complainant's Ontario driver's license issued by the Ministry of Transportation (MTO) under the Highway Traffic Act. The complainant refused to provide the MTO driver's license. The Police Officer then checked the complainant on the Canadian Police Information Centre (CPIC) by using his name and birth date. CPIC provided the Police Officer with the complainant's home address and his MTO driver's licence number. The Police Officer then wrote the complainant a Provincial Offences Notice ticket (the Ticket) for the traffic violation, using the MTO driver's license number.

The complainant stated that the Police should have accepted his military driver's license and should not have collected his MTO driver's license number from CPIC. He was concerned that the Police's collection and use of this information was contrary to the Municipal Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Was the Police's collection of the personal information in compliance with section 28(2) of the Act?
- (C) Was the Police's use of the personal information in compliance with section 31 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, **age**, sex, sexual orientation or marital or family status of the individual,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,

The information in question was the complainant's name, birth date, home address and MTO driver's licence number.

It is our view that this information met the requirements of paragraphs (a), (c), and (d) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was personal information as defined in section 2(1) of the Act.

Issue B: Was the Police's collection of the personal information in compliance with section 28(2) of the Act?

Under the Act, personal information cannot be collected except in the specific circumstances outlined in section 28(2) of the Act which states:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, **used for the purposes of law enforcement** or necessary to the proper administration of a lawfully authorized activity. (emphasis added)

The Police stated that they are responsible for enforcing and regulating compliance with the Criminal Code of Canada as well as provincial and municipal legislation. CPIC is a national repository of police operational information that is a vital resource shared within Canadian law enforcement agencies. The Police advised us that CPIC is a tool used by police in carrying out their duties as dictated by the Police Services Act. For example, it is a regular procedure to run a CPIC check on a person stopped by a police officer for a driving violation. CPIC is used to ascertain if a person is wanted on a criminal warrant, for an investigation, or is a suspended driver. CPIC also gives officers pertinent information needed for public and officer safety. The CPIC system gives information about whether a person is violent or a possible suicide risk.

The Police advised us that the complainant's name and birth date were collected from the complainant for the purpose of checking the CPIC system to see if the complainant had been suspended from driving, and for the purpose of issuing the Ticket for the traffic violation. The complainant's MTO driver's license number was collected from CPIC by the Police Officer also for the purpose of issuing the Ticket for the traffic violation. The Police stated that all of the complainant's personal information was collected to be used for the purpose of law enforcement, in compliance with section 28(2) of the Act.

In our view, the complainant's name and birth date were collected during the course of the Police Officer's duties as a law enforcement officer, further to the Police Services Act. The collection was for the purpose of checking the CPIC system regarding whether the complainant had been suspended from driving, and to prepare a complete Ticket. Since the complainant's name and birth date were used for the purposes of law enforcement, it is our view that the collection of this personal information was in compliance with section 28(2) of the Act.

In our view, the Police collected the complainant's MTO driver's license number to issue him a ticket for his traffic violation, for the purpose of enforcing the Highway Traffic Act. Since the Police used the complainant's MTO driver's license number for the purposes of law enforcement, it is our view that the collection of this personal information was in compliance with section 28(2) of the Act.

With regard to the collection of the complainant's home address, the Ticket contained the complainant's military address and not his home address. In our view, in order for a **collection** to have taken place, retention of the information in a recorded form must occur. Since the Police Officer did not record the complainant's home address on the Ticket, the collection of the complainant's home address in a recorded form did not take place and section 28(2) of the Act did not apply.

Conclusion: The Police collected the complainant's name, birth date, and MTO driver's license number in compliance with section 28(2) of the Act.

The Police did not collect the complainant's home address, therefore, section 28(2) of the Act did not apply.

Issue C: Was the Police's use of the personal information in compliance with section 31 of the Act?

Under the Act, personal information in the custody and control of an institution cannot be used except in the specific circumstances outlined in section 31 of the Act.

The Police stated that they relied upon section 31(b) of the Act as its authority for the use of the complainant's personal information. This section states that an institution shall not use personal information in its custody or under its control except "for the purpose for which it was obtained or compiled or for a consistent purpose".

The Police used the complainant's name and birth date to check the CPIC system to determine whether the complainant had been suspended from driving, and to complete the Ticket for the traffic violation. In Issue B we found that the complainant's name and birth date were collected by the Police for the purposes of law enforcement. Since the complainant's name and birth date were used for the purpose for which they were obtained by the Police, their use was in compliance with section 31(b) of the Act.

The Police informed us that information available from CPIC is used to detect, prevent and suppress crime and to enforce of the law. The Police Officer used the complainant's MTO driver's license number for the purpose of issuing the complainant a ticket for a traffic violation

under the Highway Traffic Act. Since the complainant's MTO driver's license number was collected for use for law enforcement purposes, it is our view that the complainant's personal information was used for the purpose for which it was obtained by the Police, in compliance with section 31(b) of the Act.

Conclusion: The Police used the complainant's personal information in compliance with section 31 of the Act.

Other Matters

The complainant stated that he thought that the Police Officer should have accepted his military license instead of his MTO driver's license number, in order to complete the Ticket. However, since there was no collection and use of the complainant's military driver's license under the Act, its provisions do not apply to this matter and we are unable to comment further.

The Police, nevertheless, advised us that they felt that they should clarify their "Policy and Procedure" which deals with military drivers and vehicles for police officers. Therefore, the Police are in the process of reviewing the National Defence Act and other relevant legislation, to determine whether the present "Policy and Procedure" should be revised.

SUMMARY OF CONCLUSIONS

- The information in question was personal information as defined in section 2(1) of the Act.
- The Police collected the complainant's name, birth date and MTO driver's license number in compliance with section 28(2) of the Act.

The Police did not collect the complainant's home address, therefore, section 28(2) of the Act did not apply.

- The Police used the complainant's personal information in compliance with section 31 of the Act.

Original Signed By: _____
Susan Anthistle
Compliance Review Officer

December 22, 1994
Date

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-ISC



Information and Privacy
Commissioner/Ontario
Commissionaire à l'information
et à la protection de la vie privée/Ontario

INVESTIGATION REPORT

INVESTIGATION I94-051P

MINISTRY OF HEALTH



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a psychiatric hospital (the Hospital) of the Ministry of Health (the Ministry).

The complainant, an employee of the Ministry, was working under a Memorandum of Agreement between herself and the Ministry to better accommodate her in the workplace, further to the Ontario Public Service's Employment Equity Program. The complainant had a severe shellfish allergy. During the course of adjusting the complainant's working arrangements under the Memorandum of Agreement, the complainant's personal information, including her medical information and employee accommodation requirements, was disclosed to the Director of Medical Services (the Director) at the Hospital.

The complainant was concerned that the disclosure of this information to the Director, without her consent, was not in compliance with the Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Was the Ministry's disclosure of the complainant's personal information to the Director in accordance with section 42 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?

Section 2(1) states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The information in question consisted of the Memorandum of Agreement dated January 15, 1993, six internal memoranda dated April 25, 1994, June 16, 1994, and June 30, 1994, and two medical letters from the complainant's doctors dated June 19, 1992 and March 3, 1993. The information contained in these documents included the complainant's name together with her medical information, information about her special employment requirements, and arrangements that had been made for her by the Ministry.

It is our view that this information met the requirements of paragraph (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was personal information as defined in section 2(1) of the Act.

Issue B: Was the Ministry's disclosure of the complainant's personal information to the Director in accordance with section 42 of the Act?

Under the Act, personal information cannot be disclosed except in the specific circumstances outlined in section 42. The Ministry stated that it had relied upon sections 42(c) and (d) of the Act for the disclosure. Section 42(c) states that:

An institution shall not disclose personal information in its custody or under its control except,

- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;

Section 43 further provides that:

Where personal information has been collected directly from the individual to whom the information relates, the purpose of a use or disclosure of that information is a consistent purpose under clauses 41(b) and 42(c) only if the individual might reasonably have expected such a use or disclosure.

The Ministry stated that the nursing administration at the Hospital had explored alternative programs and work setups to provide the complainant with a safer and more controlled work environment. Part of these efforts had included consultation with the Director, who was familiar with all the wards, the patient population and the overall operation of the Hospital.

It was the Ministry's view that, considering the Director's position in the Hospital and his knowledge, both administrative and medical, of all wards, programs and dietary regimes, the disclosure of her personal information, as part of the Hospital's efforts to assign her to an allergen-free work environment, might reasonably have been expected by the complainant. The Ministry maintained that the disclosure was, thus, for a consistent purpose in compliance with section 42(c) of the Act.

The complainant informed us that the Hospital had requested that she sign two different authorization letters giving her consent to allow the release of her medical information to the Hospital. The complainant had refused to sign the authorizations because she felt that they were too broad. The complainant was not aware that the Director had been consulted until after she had received a copy of the Director's memorandum relating to that consultation.

It is our view that since the complainant had not signed the authorization letters and had not been informed that the Director would be consulted as part of the Ministry's arrangements for the employment accommodation, she would not reasonably have expected that her personal information would be disclosed to the Director. Therefore, it is our view that the disclosure was not for a consistent purpose and was not in compliance with section 42(c) of the Act.

The Ministry also relied upon section 42(d) of the Act which states that an institution shall not disclose personal information in its custody or under its control except:

- (d) where disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and where disclosure is necessary and proper in the discharge of the institution's functions;

The Ministry advised us that Medical Services staff, including the Director, provide direct and indirect health and safety services to the Hospital and its employees on an informal basis. These services include sporadic adhoc workplace accommodation consultation to the Employee Health nurse, management staff and employees, and sporadic adhoc rudimentary medical consultation/referral to employees, upon request.

The Ministry submitted that the Director's previous experience as an occupational health and safety physician, together with his medical expertise, enabled him to provide valuable input into the determination of appropriate assignments for the complainant. As Medical Director, the Director had to weigh the net effect of the complainant's accommodation agreement on the patients on various wards, with a view to minimizing negative impacts on patients' menus and nutrition. It was for this reason, as well as for his background and knowledge of the Hospital's patient population and ward structure, that the Director's opinion was deemed of value. The Ministry submitted that, therefore, the Director needed the complainant's personal information in the performance of his duties of assisting the Hospital and the complainant in reaching a satisfactory resolution regarding the complainant's employment accommodation requirements.

The complainant informed us that the Director was responsible for providing medical care to the patients of the Hospital, and not the staff. She stated that the Director was not a specialist in her medical condition. The complainant had provided the Hospital with medical letters from her specialist doctors regarding her condition, and she maintained that consultation with the Director was unnecessary. She also advised that it was not within the normal course of the Director's duties to do a consultation of this nature.

It is our view that the provision of a work environment in which an employee's particular accommodation needs are met, further to the Ontario Public Service's Employment Equity Program, is a function of the Hospital. Ensuring the health and safety of its patients is also a function of the Hospital.

In our view, in arranging for the complainant's employment accommodation, the Hospital was required to consider the needs of both its employee and its patients. As Medical Director, the Director had a duty to ensure that the complainant's accommodation needs could be met with maximum possible assurance of the removal of risk to her health and safety on the job, but at the same time ensuring that her needs could be met with minimal health and safety risks to the Hospital's patients. It is, therefore, our view that the Director needed to know details and particulars of the complainant's medical condition relating to her accommodation needs and what those needs were. The disclosure of the complainant's personal information was, therefore, to an officer who required the information in the performance of his duties and the disclosure was necessary and proper in the discharge of the Hospital's functions. Therefore the disclosure was in compliance with section 42(d) of the Act.

Conclusions: The disclosure of the complainant's personal information was in compliance with section 42 of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was personal information as defined in section 2(1) of the Act.
- The disclosure of the complainant's personal information was in compliance with section 42 of the Act.

RECOMMENDATION

Although we have concluded that the disclosure of the complainant's personal information was in compliance with the Act, we note that the complainant was unaware that the Hospital, in arranging for her employment accommodation needs, had consulted the Director, until she received a copy of his memorandum about the consultation. The complainant was unaware that the Director had a duty of assisting the Hospital by ensuring that her needs could be met while at the same time, ensuring minimal health and safety risks to patients.

Therefore, we recommend that the Ministry take steps to ensure that the Hospital's procedures for processing an application for employment accommodation, or for adjusting existing accommodation arrangements, clearly set out to whom and for what reason(s), the employee's personal information may be disclosed.

Within six months of receiving this report, the Ministry should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation.

Original Signed By:
Susan Anthistle
Compliance Review Officer

February 6, 1995
Date



Information and Privacy
Commissioner/Ontario
Commissionaire à l'information
et à la protection de la vie privée/Ontario

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INVESTIGATION REPORT

INVESTIGATION I94-052P

MINISTRY OF ECONOMIC DEVELOPMENT AND TRADE

December 7, 1994



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of Economic Development and Trade (the Ministry).

The complainant had applied for a loan under the "New Ventures" program which is administered by the Ontario Development Corporation, an agency of the Ministry. Under the program, personal loans are provided, up to a certain maximum, for eligible small businesses. Applicants are required to complete an application form before the Ministry can process the request for a loan. The application form asks the applicant to give his/her Social Insurance Number (SIN).

The complainant objected to the Ministry's collection of her SIN on the application form and complained that the collection was contrary to the Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the complainant's SIN "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Was the Ministry's collection of the complainant's SIN in compliance with section 38(2) of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the complainant's SIN "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information", in part, as:

recorded information about an identifiable individual, including,

- (c) any identifying number, symbol or other particular assigned to the individual,

It is our view that the SIN is information which meets the requirements of paragraph (c) of the definition of "personal information", in section 2(1) of the Act.

Conclusion: The complainant's SIN was personal information, as defined in section 2(1) of the Act.

Issue B: Was the Ministry's collection of the complainant's SIN in compliance with section 38(2) of the Act?

Section 38(2) of the Act states:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or **necessary to the proper administration of a lawfully authorized activity**. [emphasis added].

The Ministry submitted that its collection of the SIN was necessary to the proper administration of a lawfully authorized activity. In support of its position, the Ministry stated that the Development Corporations Act, R.S.O. 1990, c.D. 10, s.12 and 13 and the Ministry of Industry and Trade Act, R.S.O. 1990, c.M. 27, s.3 and 6 provide for the creation and administration of programs such as the New Ventures program.

We examined the legislation cited. Section 12 of the Development Corporations Act sets out the objects of development corporations which include the "provision of financial assistance by loan..."

Section 13 sets out the powers of development corporations which include the lending of "money to a person carrying on any industrial undertaking in Ontario..."

Sections 3 and 6 of the Ministry of Development and Trade Act provides for the promotion of the establishment and growth of industry and trade in Ontario; the development and administration of programs as appropriate; and the provision of financial assistance and incentives.

It is our view, therefore, that the administration of the New Ventures program is a "lawfully authorized activity" within the meaning of section 38(2) of the Act.

The Ministry stated that in order to be eligible for assistance under the New Ventures program, applicants must meet certain criteria. The two criteria of particular importance are 1) the applicant must be either a Canadian citizen or a landed immigrant and 2) he/she cannot have received previous assistance under the program.

The Ministry submitted that by verifying the authenticity of an applicant's SIN (through a mathematical formula), program staff are able to confirm that the applicant is either a Canadian citizen or a landed immigrant.

The Ministry also stated that the authenticated SIN is then used to verify that the applicant has not previously been granted a New Ventures loan. The applicant's SIN is checked against existing SIN information in the program's data bases. The Ministry submitted that no other

information collected from the applicant is sufficiently unique to allow the Ministry to ensure that an applicant has not already received assistance.

It is our view that an applicant's submission of a valid SIN would not necessarily be verification that he/she is a Canadian citizen or a landed immigrant. We are not persuaded that the SIN is necessary for this purpose, as other documentation such as a birth certificate, citizenship papers, a landing record etc. could be used to verify such status.

We accept, however, the Ministry's position that the SIN is necessary for the purpose of verifying that an applicant has not previously received assistance under the New Ventures program. Thus, it is our view that the Ministry's collection of the complainant's SIN for this purpose was necessary to the proper administration of the New Ventures program. Therefore, the Ministry's collection of the complainant's SIN for this purpose was in compliance with section 38(2) of the Act.

Conclusion: The Ministry's collection of the complainant's SIN for the purpose of verifying if she had received a previous loan under the New Venture program was in compliance with section 38(2) of the Act.

OTHER MATTERS

Notice of Collection

Section 39(2) of the Act states that:

Where personal information is collected on behalf of an institution, the head shall, unless notice is waived by the responsible minister, inform the individual to whom the information relates of,

- (a) the legal authority for the collection;
- (b) the principal purposes for which the personal information is intended to be used; and
- (c) the title, business address and business telephone number of a public official who can answer the individual's questions about the collection.

During the course of our investigation, we examined the application form for a loan under the New Ventures program. The application form provides the following notice:

Any personal information contained in this, or any subsequent forms attached or forwarded at a later date, is received under the authority of Section 12 of the Development Corporations Act, R.S.O 1980, C.117 as amended, and Sections 3, 6, & 11 of the Ministry of Industry and Trade Act, S.O. 1982, C.31 and will be used to provide a data base of borrowers registered in the New Ventures loan

program, to ensure that borrowers receive only one loan and that statistical information on the program is recorded.

It is our view that the notice on the application form satisfies sections 39(2)(a) and (b) but not section 39(2)(c) of the Act.

Conclusion: The Ministry did not provide proper notice of its collection, in compliance with section 39(2) of the Act.

SUMMARY OF CONCLUSIONS

- The complainant's SIN was personal information, as defined in section 2(1) of the Act.
- The Ministry's collection of the complainant's SIN for the purpose of verifying if she had received a previous loan under the New Ventures program was in compliance with section 38(2) of the Act.
- The Ministry did not provide proper notice of its collection, in compliance with section 39(2) of the Act.

RECOMMENDATIONS

We recommend that the Ministry:

1. collect the SIN only for the purpose of verifying that an applicant has not previously received a loan;
2. amend the notice on the application form to ensure that it complies with section 39(2) of the Act.

Within six months of receiving this report, the Ministry should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendations.

Original signed by: _____
Susan Anthistle
Compliance Review Officer

December 7, 1994
Date



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Information and Privacy
Commissioner/Ontario
Commissionaire à l'information
et à la protection de la vie privée/Ontario

INVESTIGATION REPORT

INVESTIGATION I94-057M

A POLICE SERVICES BOARD

March 16, 1995



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a Police Services Board (the Board).

The complainant was a police constable with the Board. The complainant had filed a complaint with the Board against the Chief of Police (the Chief). The complainant's wife simultaneously filed a complaint against the Chief with the local office of the Police Complaints Commissioner (the PCC). The Police Services Act (PSA) authorizes the Board to administer the public complaints system. Therefore, the PCC forwarded the wife's complaint to the Board.

The Chief rendered a decision with respect to the wife's complaint. In his decision letter to the complainant's wife, the Chief stated that "I am also aware of a complaint against myself that has been initiated by your husband...". The complainant was concerned that this disclosure of his personal information to his wife was not in compliance with the Municipal Freedom of Information and Protection of Privacy Act (the Act).

The complainant also stated that the Chief's decision letter regarding his wife's complaint, which contained his personal information, was forwarded to the PCC. The complainant believed that this additional disclosure was not in compliance with the Act.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Was the complainant's personal information disclosed to his wife in compliance with section 32 of the Act?
- (C) Was the complainant's personal information disclosed to the PCC in compliance with section 32 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The information in question was the complainant's name together with the fact that he had filed a complaint against the Chief with the Board. In our view, this information met the requirements of paragraph (h) of the definition of "personal information" in section 2(1) of the Act.

Conclusion: The information in question was personal information, as defined in section 2(1) of the Act.

Issue B: Was the complainant's personal information disclosed to his wife in compliance with section 32 of the Act?

Under the Act, personal information in the custody or under the control of an institution cannot be disclosed except in the specific circumstances outlined in section 32. The Board has relied upon section 32(e) of the Act for the disclosure of the complainant's personal information. Section 32(e) states:

An institution shall not disclose personal information in its custody or under its control except,

- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or treaty;

The Board informed us that the complainant's wife had filed a public complaint with the PCC against the Chief under section 77(1)(b) Part VI, of the PSA.

The Board further informed us that section 41(1)(e) of the PSA states that the duties of a Chief include administering the public complaints system under Part VI of the PSA and, consequently, the complainant's wife's complaint had been forwarded to the Chief. The Board informed us that the Chief found the wife's complaint to be vexatious in nature, and made in bad faith. The Chief directed that no further action be taken. The Board maintained that this decision was made by the Chief in accordance with section 85(1) of the PSA, which states:

At any time before making a decision under section 90, the chief of police may decide that the complaint or part of it shall not be further dealt with under this Part, if he or she is of the opinion that the complaint or part is frivolous or vexatious or was made in bad faith.

The Board submitted that it disclosed the complainant's personal information in order to comply with section 85(2) of the PSA, which states:

The chief of police shall give the Commissioner [PCC], the complainant and the police officer notice of the decision.

The Board maintained that it is customary for the Chief to give the reasons behind his decision in the "notice of the decision". The Board stated that the fact that the complainant had made a complaint against the Chief was part of the evidence used to reach a conclusion with respect to the wife's complaint. The Board maintained that it was proper and fair to inform the wife of the relevant factors considered in ruling her complaint vexatious. Thus, the Board submitted that the disclosure of the complainant's personal information to the wife, as one of the relevant factors in the Chief's decision, was in compliance with section 32(e) of the Act.

It is our view that the word "complying" in section 32(e) of the Act means that there must be a specific requirement for the disclosure in question. Under section 85(2) of the PSA, the Chief was required to provide notice of his decision but not specifically to disclose the complainant's personal information to his wife. It is, therefore, our view that since the Chief's disclosure was not for the purpose of complying with an Act of the legislature, section 32(e) of the Act did not apply in the circumstances of this case.

We have examined the remaining provisions of section 32 of the Act. It is our view that none applied to the disclosure of the complainant's personal information to his wife.

Conclusion: The disclosure of the complainant's personal information to his wife was not in compliance with section 32 of the Act.

Issue C: Was the complainant's personal information disclosed to the PCC in compliance with section 32 of the Act?

The Board has relied upon sections 32(f) and (g) of the Act for the disclosure of the complainant's personal information to the PCC. Section 32(f) and (g) state that an institution shall not disclose personal information in its custody or under its control except:

- (f) if disclosure is by a law enforcement institution,
 - (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
 - (ii) to another law enforcement agency in Canada;
- (g) if disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

In order for section 32(f) of the Act to apply, the disclosure must be by a law enforcement institution to a law enforcement agency in Canada. Section 2(1) of the Act sets out the definition of "law enforcement" as:

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b);

The Board is an institution involved in activities which include policing and investigations or inspections that lead or could lead to proceedings in a court or tribunal where penalties or sanctions could be imposed. It is our view that these are law enforcement activities and that the Board is, thus, a law enforcement institution.

In Order P-659, Inquiry Officer Donald Hale examined whether an investigation undertaken by the PCC qualified as a "law enforcement investigation" within the meaning of section 14(2)(a) of the Act. In this Order, he states:

In its representations, the Ministry claims that the PCC has the statutory authority to call a Board of Inquiry to adjudicate on the substance of allegations of police misconduct. The Board of Inquiry is empowered under the Police Services Act to impose penalties or sanctions on officers found to have engaged in unlawful conduct.

The Ministry indicates and I accept that the investigation which resulted in the creation of the record at issue could have led to a Board of Inquiry hearing and possible penalties or sanctions against the officers named in the complaint...the report was prepared in the course of a law enforcement investigation.

Inquiry Officer Hale also stated:

In Order P-416, Assistant Commissioner Tom Mitchinson addressed the application of section 14(2)(a) of the Act to a number of records created by the PCC. He stated that:

In my view, in order for a record created by the PCC to qualify for consideration under either sections 14(1) or (2) of the Act, the PCC must establish that it has a law enforcement mandate ...

The record at issue in this appeal relates directly to the PCC's mandate to investigate possible infractions of the Police Services Act. I also find that, for the purposes of section 14(2)(a), the PCC qualifies as a "law enforcement tribunal" which has the function of enforcing compliance with a law, in particular, the Police Services Act...

It is our view that once a member of the public makes a complaint to the PCC about the conduct of a police officer, such a complaint could result in a disciplinary hearing under section 60 of the PSA, a hearing by a board of inquiry, or cause an information to be laid against the police officer and the matter referred to the Crown Attorney for prosecution. The complaint could, therefore, result in penalties and sanctions against the officer named in the complaint.

Thus, it is our view that the PCC has a law enforcement function and can be considered to be a law enforcement agency. Accordingly, the disclosure of the complainant's personal information by a law enforcement institution, the Board, to the PCC, a law enforcement agency, was in compliance with section 32(f) of the Act.

In light of the above, it is not necessary for us to examine section 32(g) or the remaining provisions of section 32 of the Act.

Conclusion: The Board's disclosure of the complainant's personal information to the PCC was in compliance with section 32 of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was personal information, as defined in section 2(1) of the Act.
- The disclosure of the complainant's personal information to his wife was not in compliance with section 32 of the Act.
- The Board's disclosure of the complainant's personal information to the PCC was in compliance with section 32 of the Act.

RECOMMENDATION

We recommend that the Board take steps to ensure that all Board employees are aware of the disclosure provisions in the Act. For example, all staff members who handle personal information should be reminded in writing of the limited circumstances under which the disclosure of personal information is permitted.

Within six months of receiving this report, the Board should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation.

Original Signed by: _____
Ann Cavoukian, Ph.D.
Assistant Commissioner

March 16, 1995
Date



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

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Publications

INVESTIGATION REPORT

INVESTIGATION I94-064P

MINISTRY OF MUNICIPAL AFFAIRS

May 2, 1995



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of Municipal Affairs (the Ministry).

The complainant had been involved with an appeal to the Ontario Municipal Board (the OMB) of a zoning by-law, in a particular town (the Town). Sometime later, the complainant sent a letter to the Minister of Municipal Affairs (the Minister), by facsimile, complaining about the conduct of the Interim Chair of the OMB and requesting that the Ministry investigate the OMB's handling of the appeal.

The complainant stated that although his facsimile cover sheet to the Minister was clearly marked "confidential," the Minister had nonetheless disclosed his letter in its entirety to the Interim Chair who was, "the official about whom I was complaining." The complainant provided us with a copy of the Minister's reply, in which he stated: "... I have noted your concerns and have forwarded a copy of your letter and my response to (the named Interim Chair), for his attention." The complainant believed that this disclosure of his personal information had contravened the Freedom of Information and Protection of Privacy Act (the Act).

The complainant also provided us with a copy of a facsimile cover sheet which an employee of the Ministry had sent to an employee of the Town. In the "Comment" section, the Ministry employee had stated: "As per your request, I have attached a copy of our Minister's recent response to (the named complainant) regarding an OMB matter. I have also attached (the named complainant's) letter." The complainant felt that this disclosure had also violated the Act.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Was the complainant's personal information disclosed to the Interim Chair of the OMB, in compliance with section 42 of the Act?
- (C) Was the complainant's personal information disclosed to the Town, in compliance with section 42 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?

Section 2(1) states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The complainant's letter to the Minister and the Minister's reply contained the following information about the complainant: his name, address and telephone number, his OMB file numbers, the fact that he had requested the Ministry to investigate the OMB's handling of the zoning matter, reference to a letter that the Interim Chair had written to the complainant and another individual, the complainant's view that the OMB had mismanaged this case, and the fact that the complainant's letter constituted a formal complaint regarding the conduct of the OMB's Interim Chair.

In our view, this information met the requirements of paragraphs (c), (d), (e) and (h) of the definition of "personal information" in section 2(1) of the Act.

Conclusion: The information in question was "personal information" as defined in section 2(1) of the Act.

Issue B: Was the complainant's personal information disclosed to the Interim Chair of the OMB, in compliance with section 42 of the Act?

Under the Act, personal information in the custody or under the control of an institution cannot be disclosed except in the specific circumstances outlined in section 42.

The Ministry stated that section 42(c), disclosure for a consistent purpose, supported its disclosure to the OMB's Interim Chair since the OMB was in the best position to respond to the allegations raised in the complainant's letter.

The complainant stated, however: "I never expected, in writing the letter to the Minister, that he would send that same letter to the person who was the subject of my complaint."

Section 42(c) of the Act states that an institution shall not disclose personal information in its custody or under its control except "for the purpose for which it was obtained or compiled or for a **consistent purpose**" (emphasis added).

Section 43 of the Act further provides that:

Where personal information has been collected directly from the individual to whom the information relates, the purpose of a use or disclosure of that information is a consistent purpose under clauses 41(b) and 42(c) only if the individual might reasonably have expected such a use or disclosure.

In our view, the Ministry obtained or compiled the complainant's personal information for the purpose of dealing with his complaint.

It is also our view that in order for a complaint to be fairly and properly dealt with, the person complained about must be advised of what they are accused of, and by whom, to enable them to address the validity of the complaint. The complainant must also be informed of the direct response to the allegations.

Therefore, in this particular case, the Interim Chair needed to be given an opportunity to respond to the allegations made against him, thus necessitating the disclosure of the complainant's personal information. And, notwithstanding the complainant's assertion that he never expected the Minister to disclose his letter to the Interim Chair, it is our view that an individual in these circumstances might **reasonably** expect such a disclosure of their personal information, for the proper handling of their complaint. It is thus our view that the Ministry disclosed the complainant's personal information to the Interim Chair for a consistent purpose, in compliance with section 42(c) of the Act.

Conclusion: The complainant's personal information was disclosed to the Interim Chair of the OMB in compliance with section 42 of the Act.

Issue C: Was the complainant's personal information disclosed to the Town, in compliance with section 42 of the Act?

The Ministry submitted that because the appeal to the OMB involved the Town, and because it was possible that the Town "had other dealings with the Ministry on this or related matters, or otherwise had relevant information," the Ministry employee had contacted the Town "to obtain further information."

The Ministry further submitted that without the complainant's identity, the Town would not necessarily have been able to provide the very information that the Ministry needed. The Ministry stated that information that the complainant had submitted to the Town regarding the matter before the OMB "... might be relevant to the conduct of the chair of the OMB, and therefore to any answer the Ministry employee would make to the Minister."

The Ministry concluded that the complainant could reasonably have expected that it would have disclosed his name "... to those with potentially relevant information, and therefore disclosure was a 'consistent disclosure' within the meaning of s. 43."

As previously cited, under section 42(c) of the Act, an institution shall not disclose personal information in its custody or under its control except, "for the purpose for which it was obtained or compiled or for a consistent purpose." Section 43 of the Act further provides that a disclosure of information is for a consistent purpose only if the individual might reasonably have expected such a disclosure.

As we stated in Issue B, it is our view that the Ministry obtained or compiled the complainant's personal information for the purpose of dealing with his complaint. Since the complaint specifically concerned the OMB's conduct in the matter of the appeal and not the Town's involvement, we are not persuaded that, in these circumstances, the complainant might reasonably have expected that the Ministry would contact the Town for information that "might" be relevant to the Ministry's inquiry into his complaint. Accordingly, it is our view that the Ministry's disclosure of the complainant's personal information to the Town was not for a consistent purpose in compliance with section 42(c) of the Act.

We reviewed the remaining provisions of section 42 and found that none applied in the circumstances of this complaint.

Conclusion: The disclosure of the complainant's personal information to the Town was not in compliance with section 42 of the Act.

Other Matters

Facsimile Transmission of the Complainant's Personal Information

Since this complaint concerned the disclosure of the complainant's personal information to the Town via facsimile, we wish to remind the Ministry of our facsimile transmission guidelines. Accordingly, we enclosed with our draft report a copy of the following documents: "Guidelines on Facsimile Transmission Security, June 1989," and "Update on the 1989 Guidelines on Facsimile Transmission Security, June 1990."

SUMMARY OF CONCLUSIONS

- The information in question was "personal information" as defined in section 2(1) of the Act.
- The complainant's personal information was disclosed to the Interim Chair of the OMB in compliance with section 42 of the Act.
- The disclosure of the complainant's personal information to the Town was not in compliance with section 42 of the Act.

RECOMMENDATIONS

We recommend that the Ministry take steps to ensure that personal information is disclosed only in compliance with section 42 of the Act.

Within six months of receiving this report, the Ministry should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation.

Original signed by: _____
Ann Cavoukian, Ph.D.
Assistant Commissioner

May 2, 1995
Date



Information and Privacy
Commissioner/Ontario
Commissionaire à l'information
et à la protection de la vie privée/Ontario

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INVESTIGATION REPORT

INVESTIGATION I94-067P

MINISTRY OF THE ATTORNEY GENERAL

January 4, 1995



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of the Attorney General (the Ministry).

The complainant was employed at a Regional Centre of the Ministry of Community and Social Services (MCSS). He was a "surplus" employee and was involved in the Ontario government's redeployment process. As a part of this process, Management Board Secretariat matched the complainant's employment "profile" with respect to a vacancy and sent it to the Ministry's Human Resources Branch. The Branch in turn faxed the complainant's profile and that of another individual to the Court Services Manager at a named Ministry courthouse for his consideration.

According to the complainant, an employee at the courthouse subsequently disclosed to staff at the Regional Centre that she had read the faxed materials, and that the complainant and the other individual had secured positions with the courthouse through the redeployment process.

When the complainant became aware of this disclosure, he contacted the appropriate staff in the Redeployment Unit at the Regional Centre. They did not know about the match. A few days later, however, it became apparent that the complainant was being considered for a position at the courthouse.

The complainant was concerned that the Ministry employee had disclosed his personal information contrary to the provisions of the Freedom of Information and Protection of Privacy Act, (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Was the Ministry's disclosure of the personal information in compliance with section 42 of the Act?
- (C) Did the Ministry take reasonable measures to prevent unauthorized access to records?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information", in part, as:

recorded information about an identifiable individual, including

- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The information in question included the complainant's profile containing his name together with other information about him, and the information that he was being considered for assignment with the Ministry. It is our view that this information met the requirements of paragraph (h) of the definition of "personal information" in section 2(1) of the Act.

Conclusion: The information was the complainant's personal information, as defined in section 2(1) of the Act.

Issue B: Was the Ministry's disclosure of the personal information in compliance with section 42 of the Act?

Section 42 of the Act sets out the conditions for the disclosure of personal information. This section provides that an institution shall not disclose personal information in its custody or under its control except in specific circumstances. (The full text of section 42 is given in Appendix A.)

The Ministry informed us that the appropriate Regional Director for courts administration had initiated an internal investigation to address the complainant's concerns about the disclosure of his personal information by a named Ministry employee.

The Ministry stated that the employee, who the complainant believed had disclosed his personal information to MCSS Regional Centre staff, was the local union steward. The Ministry found that she had become involved when she had been told by courthouse staff about the contents of the fax. She had then discussed with the Court Services Manager, the staff's concerns that their jobs might be "threatened" by the proposed assignments.

The Ministry concluded in its internal investigation that it was "likely that the disclosure of the information regarding the assignment of the surplus staff may have originated from the courthouse, however, the actual source is unidentifiable due to conflicting statements of those questioned" during its investigation. The Ministry also stated that it was also evident that "the disclosure of personal information by the courthouse staff resulted in an unjustified invasion of the personal privacy of the complainant."

Having considered the information provided by the complainant and the Ministry, it is our view that there was a disclosure of the complainant's personal information by courthouse staff to the Ministry employee named by the complainant. It is also our view that there was also a disclosure to staff at the MCSS Regional Centre but we are unable to say conclusively that it was the named employee who made this disclosure.

We have examined the provisions of section 42 of the Act, however, and it is our view that none were applicable to the Ministry's disclosures of the complainant's personal information.

Conclusion: The Ministry's disclosures of the complainant's personal information were not in compliance with section 42 of the Act.

Issue C: Did the Ministry take reasonable measures to prevent unauthorized access to records?

The Ministry found in its internal investigation that its Human Resources Branch had to fax the complainant's profile to the Court Services Manager because the Ministry had only 48 hours to review, accept or reject candidates for assignments. The Ministry concluded that the sender of the fax, however, did not call ahead to ensure that the addressee would be available or sever personal identifiers from the document before it was sent.

The Ministry also found that the fax machine at the court house was accessible to all courthouse staff. In this case, although the fax was addressed to the Court Services Manager, employees in the courthouse apparently had access to and knew of the information contained in the fax before the Manager did. The Ministry informed us that "unofficial" word spread that the complainant and the other individual had received assignments to the courthouse.

The Ministry stated that it was evident that "personal information about an individual was faxed to the courthouse by the Human Resources Branch of the Ministry and necessary precautions were not taken before the information was faxed."

Section 4(1) of Regulation 460 under the Act states:

Every head shall ensure that reasonable measures to prevent unauthorized access to records in his or her institution are defined, documented and put in place, taking into account the nature of the records to be protected.

We were informed by the Ministry that there was only one fax machine at the courthouse, located in a central, open area accessible to all courthouse staff and that any one of the courthouse staff could take incoming correspondence from the fax machine.

Our office's "Guidelines on Facsimile Transmission Security" provides information on security measures for the transmission of faxes. It advises, for example, that one person should be identified as responsible for all fax operations. The fax machine should be located so that it is not in a public area, its use can be monitored by the responsible person, and only authorized staff can have access to the information transmitted on the fax.

The Ministry did not have these or any other measures to prevent unauthorized access to faxed documents. It is our view, therefore, that the Ministry did not ensure that reasonable measures were defined, documented and put in place to prevent unauthorized access to records, in compliance with section 4(1) of Regulation 460.

Conclusion: The Ministry did not take reasonable measures to prevent unauthorized access to records.

SUMMARY OF CONCLUSIONS

- The information was the complainant's personal information, as defined in section 2(1) of the Act.
- The Ministry's disclosures of the complainant's personal information were not in compliance with section 42 of the Act.
- The Ministry did not take reasonable measures to prevent unauthorized access to records.

RECOMMENDATIONS

The Ministry informed us that it planned to implement the following measures to ensure that similar disclosures did not occur in future.

- To conduct a training and awareness session at the courthouse to ensure that staff are aware of and understand the privacy provisions of the Act, in carrying out their responsibilities.
- To develop internal privacy guidelines to reinforce the responsibilities of staff in terms of privacy.
- To review the fax procedures at the courthouse and make necessary changes to deal with the receipt and distribution of incoming faxes which contain personal information.
- To review our office's "Guidelines on Facsimile Transmission Security" with the courthouse staff.

In addition, the Ministry advised that the Human Resources Branch had already implemented a procedure to telephone and notify the intended recipient ahead of time, if personal information was being faxed. In conjunction with this procedure, the fax sheet had been amended to clearly note "PERSONAL AND CONFIDENTIAL".

We, therefore, recommend that the Ministry implement its planned measures to prevent similar improper disclosures of personal information in future.

Within six months of receiving this report, the Ministry should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation.

Original Signed by: _____
Susan Anthistle
Compliance Review Officer

January 4, 1995
Date

42. An institution shall not disclose personal information in its custody or under its control except,

- (a) in accordance with Part II;
- (b) where the person to whom the information relates has identified that information in particular and consented to its disclosure;
- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
- (d) where disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and where disclosure is necessary and proper in the discharge of the institution's functions;
- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament or a treaty, agreement or arrangement thereunder;
- (f) where disclosure is by a law enforcement institution,
 - (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
 - (ii) to another law enforcement agency in Canada;
- (g) where disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
- (i) in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased;
- (j) to a member of the Legislative Assembly who has been authorized by a constituent to whom the information relates to make an inquiry on the constituent's behalf or, where the constituent is incapacitated, has been authorized by the next of kin or legal representative of the constituent;

- (k) to a member of the bargaining agent who has been authorized by an employee to whom the information relates to make an inquiry on the employee's behalf or, where the employee is incapacitated, has been authorized by the next-of-kin or legal representative of the employee;
- (l) to the responsible minister;
- (m) to the Information and Privacy Commissioner; and
- (n) to the Government of Canada in order to facilitate the auditing of shared cost programs.

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Information and Privacy
Commissioner of Ontario
Commissaire à l'information
et à la protection de la vie privée Ontario

INVESTIGATION REPORT

INVESTIGATION I94-070M

A BOARD OF EDUCATION

March 16, 1995



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a Board of Education (the Board). The grade nine class attended by the complainant's child had been assigned a project entitled "Connections Portfolio" (the Project). To complete the Project, students were required to disclose personal information relating to their ancestry, race, and country of origin and that of their family members.

When the complainant made his concerns about the Project known to the Board, the Board advised him that his child could complete an alternative project, which would not contain any personal information. However, the complainant rejected this option as he felt his child might be singled out, or risk harassment from other students if his child did not complete the same project as the other students. The complainant stated that he had advised his child to make up false information in order to complete the Project without disclosing personal information.

The complainant stated that the Board's collection of the personal information requested in the Project demonstrated a lack of sensitivity to ethnic and civil liberties issues, and was a violation of the privacy rights protected by the Municipal Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information requested for the Project "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Was the personal information collected in compliance with section 28(2) of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information requested for the Project "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information" as recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual;

We reviewed a copy of the Project outline. The requested information for the Project included information about the student's and his or her family's ancestry, place of birth, immigration, and

country of origin. In our view, this information was information that met the requirements of paragraph (a) of the definition of "personal information" in section 2(1) of the Act.

Conclusion: The information requested for the Project was personal information as defined in section 2(1) of the Act.

Issue B: Was the personal information collected in compliance with section 28(2) of the Act?

Section 28(2) of the Act states that:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity. (emphasis added).

The Board provided us with copies of the common curriculum and the Project outline. The Board stated that the Project was developed for the Self and Society program area. The common curriculum describes the Self and Society program area as a combination of several traditional areas of study, including business studies, family studies, geography, guidance, history, and physical and health education. A central goal of the program area is to help students understand their society and their possible roles in it. In addition, as students learn about other societies, they come to understand and respect the differences between people. Students investigate various social, political, economic, and environmental systems, and the ways in which human beings depend on each other.

The common curriculum further states that in the process, students come to understand their own heritage by studying their own historical, cultural, and linguistic background and that the study of other cultures helps them value the contributions that diverse groups have made to Canada and the world.

Therefore, the Board submitted that the Project was designed not only to teach traditional subjects, but to promote multi-culturalism and a sense of self-worth. The Board further stated that it recognized that the program dealt with sensitive issues and as a result, it had offered alternative assignments for students.

The Board submitted, however, that in its view, the Act did not apply in the circumstances of this case, partly because the Project was not an assignment from the Board but from a specific teacher who returned the assignments to students once they had been assessed and marked. In our view, teachers are employees of the Board who assign projects and collect and use students' personal information on these assignments on behalf of the Board. Therefore, the Act was applicable.

The Board submitted that if the Act did apply, then its collection of personal information for the Project was in compliance with section 28(2) of the Act, i.e. necessary to the proper administration of a lawfully authorized activity.

The Board referred us to the Education Act, which allows it to design and teach courses of study such as the Project, under the mandate of the Ministry of Education and Training (MET). The Project was based on MET guidelines as an integrated unit for all grade 9 students.

The Board referred us to the following provisions of the Education Act:

Section 8(1), paragraph 2:

The Minister may:

prescribe the courses of study that shall be taught and the courses of study that may be taught in the primary, junior, intermediate and senior divisions;

Section 171(1), paragraph 8 gives further authority for a board to:

provide instruction in courses of study that are prescribed or approved by the Minister, developed from curriculum guidelines issued by the Minister or approved by the board where the Minister permits the board to approve courses of study;

In our view, the following provision of the Education Act also applies:

Section 170, paragraph 6:

Every board shall:

provide instruction and adequate accommodation during each school year for the pupils who have a right to attend a school under the jurisdiction of the board.

In our view, the above provisions of the Education Act set out the Board's authority to provide instruction in courses of study for students that are developed from the common curriculum guidelines issued by the Minister.

The complainant disagreed that the Board acted in accordance with the guidelines set out by the MET. He contended that the MET had not set guidelines for the incorporation of multiculturalism into the curriculum. It is our view, however, that since the guidelines do not sanction actual course content, the Board had not contravened the MET guidelines by assigning a multicultural component to the Project.

Thus, it is our view that in this case, the Board's assignment of projects, as part of providing instruction in a course of study for students, was a lawfully authorized activity. Further, it is our view that the personal information requested for the Project was necessary in order to properly administer the Project, i.e. for the assignment to be completed and students evaluated. Therefore, the Board's collection of personal information was necessary to the proper administration of a lawfully authorized activity, in accordance with section 28(2) of the Act.

Conclusion: The Board's collection of personal information for the Project was in compliance with section 28(2) of the Act

SUMMARY OF CONCLUSIONS

- The information requested for the Project was personal information as defined in section 2(1) of the Act.
- The Board's collection of personal information for the Project was in compliance with section 28(2) of the Act.

Original Signed by:
Ann Cavoukian, Ph.D.
Assistant Commissioner

March 16, 1995
Date



Information and Privacy
Commissioner/Ontario
Commissionaire à l'information
et à la protection de la vie privée/Ontario

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INVESTIGATION REPORT

INVESTIGATION I94-074P

MINISTRY OF THE ATTORNEY GENERAL

January 3, 1995



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of the Attorney General (the Ministry).

The complainant was employed at a Regional Centre of the Ministry of Community and Social Services (MCSS). She had written a letter to the Administrator of the Regional Centre about a Ministry employee at a named courthouse. This letter was marked "Private/Confidential" at the top. The complainant had also sent copies of the letter by fax to the Ministry's Regional Director and to the Court Services Manager at the courthouse. According to the complainant, the employee, who was the subject of her letter, had obtained a copy of the letter, put her own name and telephone on it, and had distributed copies of it at the Regional Centre.

The complainant was concerned that the Ministry's employee had disclosed her personal information contrary to the Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Was the Ministry's disclosure of the personal information in compliance with section 42 of the Act?
- (C) Did the Ministry take reasonable measures to prevent unauthorized access to records?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information", in part, as:

recorded information about an identifiable individual, including

- (d) the address, **telephone number**, fingerprints or blood type of the individual,
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual; (emphasis added)

The information in question was the complainant's name and her telephone/fax number. It is our view that this information met the requirements of paragraphs (d) and (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was the complainant's personal information, as defined in section 2(1) of the Act.

Issue B: Was the Ministry's disclosure of the personal information in compliance with section 42 of the Act?

Section 42 of the Act sets out the conditions for the disclosure of personal information. This section provides that an institution shall not disclose personal information in its custody or under its control except in specific circumstances. (The full text of section 42 is given in Appendix A.)

In this case, there were two disclosures: the courthouse staff's disclosure of the complainant's letter to the named employee and her subsequent disclosure of the letter to staff at the MCSS Regional Centre.

With respect to the first disclosure, the Ministry informed us that an internal investigation had been conducted. The Ministry found in its investigation that it was "a fact that a letter marked "Confidential/Private" was faxed to the courthouse on a weekend." The Ministry also stated that "Because the letter that was faxed did not include a cover sheet, courthouse staff inadvertently released the letter to the individual who was the subject of the letter." The Ministry's position, however, was that "the privacy of the complainant was not invaded in this case".

It is our view that although there was no cover sheet, the faxed letter from the complainant clearly indicated that it was a copy intended for the named "Court House Supervisor" and, therefore, staff should have forwarded the letter to him rather than to the employee who was the subject of the letter.

The Ministry also submitted that since the information in the letter was the personal information about the employee, if she had made "a request under the FOI Act for access to this record, she would likely have been granted access to the document." It is our view that since the employee did not make an access request under the Act, whether she would have obtained the record in response to such a request is not relevant to the issue of disclosure.

We have examined the provisions of section 42 of the Act and it is our view that none were applicable to the Ministry's disclosure of the complainant's personal information to the employee in question.

With respect to the employee's subsequent disclosure of the complainant's personal information to staff at the MCSS Regional Centre, the Ministry informed us that the incident occurred during an election campaign for the position of president of a local union. The employee, a union steward, was one of the candidates.

The Ministry submitted that in this case, the employee was acting entirely "on her own initiative in her capacity as a Union Steward and a private citizen" but not as an employee of the Ministry when she distributed copies of the complainant's letter.

It is our view that not all acts of government employees may be attributed to the institution that employs them. In the circumstances of this particular case, we agree with the Ministry's position that the employee's action of distributing a letter (containing information about herself) to staff of the Regional Centre was not on behalf of the Ministry. Section 42 of the Act applies to the disclosures of personal information by **institutions**. Therefore, in this case, section 42 was not applicable to the employee's disclosure of the complainant's personal information.

Conclusion: The Ministry's disclosure of the personal information to the employee was not in compliance with section 42 of the Act.

Section 42 of the Act did not apply to the employee's subsequent disclosure to staff at the Regional Centre.

Issue C: Did the Ministry take reasonable measures to prevent unauthorized access to records?

Section 4(1) of Regulation 460 under the Act states:

Every head shall ensure that reasonable measures to prevent unauthorized access to records in his or her institution are defined, documented and put in place, taking into account the nature of the records to be protected.

In its representations, the Ministry informed us that the fax machine at the court house, is located in a central, open area "which is accessible to all court house staff." We were also informed that there is only one fax machine and any one of the court house staff takes incoming correspondence from the fax machine.

Our office's "Guidelines on Facsimile Transmission Security", provides information on security measures for the transmission of faxes. It advises, for example that one person should be

identified as responsible for all fax operations. The fax machine should be located such that it is not in a public area, its use can be monitored by the responsible person and only authorized staff can have access to the information transmitted on the fax.

The Ministry did not have these or any other measures to prevent unauthorized access to faxed documents. It is our view, therefore, that the Ministry did not ensure that reasonable measures were defined, documented and put in place to prevent unauthorized access to records, in compliance with section 4(1) of Regulation 460.

Conclusion: The Ministry did not take reasonable measures to prevent unauthorized access to records.

SUMMARY OF CONCLUSIONS

- The information in question was the complainant's personal information, as defined in section 2(1) of the Act.
- The Ministry's disclosure of the personal information to the employee was not in compliance with section 42 of the Act.

Section 42 of the Act did not apply to the employee's subsequent disclosure to staff at the Regional Centre.

- The Ministry did not take reasonable measures to prevent unauthorized access to records.

RECOMMENDATIONS

Although it is the Ministry's position that there was no improper disclosure of the complainant's personal information in this case, it has, nevertheless, reiterated its plans to implement the measures it described in investigation I94-67P to ensure that a similar disclosure does not occur in future. These are:

- To conduct a training and awareness session at the courthouse to ensure that staff are aware of and understand the privacy provisions of the Act, in carrying out their responsibilities.
- To develop internal privacy guidelines to reinforce the responsibilities of staff in terms of privacy.

- To review the fax procedures at the courthouse and make necessary changes to deal with the receipt and distribution of incoming fax which contain personal information.

We note, however, that the Ministry did not state that it would also review our office's "Guidelines on Facsimile Transmission Security" with courthouse staff. We, therefore, recommend that the Ministry implement all four measures with reference to the circumstances of this case to ensure that no similar improper disclosure occurs in future.


Within six months of receiving this report, the Ministry should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation.

Original Signed By:
Susan Anthistle
Compliance Review Officer

January 3, 1995
Date

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 Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

INVESTIGATION REPORT

INVESTIGATION I94-079M

A Municipality

June 19, 1995



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a Municipality. The complainant's and the Municipality's accounts of the circumstances leading up to this complaint, however, differed significantly. While these differences have been noted below, the Municipality nonetheless acknowledged that it did disclose certain of the complainant's personal information.

The Municipality stated that one of its Building Inspectors had notified the complainant that he was illegally using a property he owned as a four-family dwelling, contrary to the zoning by-law.

The Municipality added that sometime later, the complainant telephoned the Area Manager of the Municipality's Building and Inspections Department (the Department) and asked him to defer the issuance of an Order to Comply against his property, further to the infraction, because he was considering running for Councillor in the 1994 municipal election, and the issuing of the Order might jeopardize his chances. The complainant, however, denied that he (a) telephoned the Area Manager, (b) requested a deferral of the work order, and (c) indicated that he was planning to run in the election.

The Municipality stated that the complainant's request to defer the Order was discussed with various officials of the Department, and with the Councillor for that ward (the Councillor). The Municipality added that the Area Manager and two Building Inspectors subsequently attended the property, and advised the complainant that the Department could not withhold the issuance of the Order. The complainant stated that a discussion regarding the Municipality's inability to defer the Order never took place.

The Municipality stated that sometime later, the Councillor telephoned the Area Manager and requested further information about the complainant's property. The Councillor was advised that an active zoning file was being compiled against this property because, although it was zoned as residential, a business was being operated from it; that an Order was being issued to the owner (i.e., the complainant) listing infractions of the housing by-law; and that a second zoning file was being started for the illegal use of this property as a four-family dwelling.

The complainant stated that the Councillor, who was running for re-election, used the information that the Department had disclosed to him in his campaign literature, as follows: "The male candidate running against (the named Councillor) in this election contributes to the problems in our neighbourhood. He has an illegal four family income property which is in disrepair and does not meet the property standards by-law under the building and inspection guidelines."

The complainant stated that the Municipality's disclosure of this information to the Councillor contravened the Municipal Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Was the personal information disclosed to the Councillor, in compliance with section 32 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The information in question was the information disclosed by the Municipality to the Councillor, in connection with the complainant's property. This included "... **all details** of the request for deferral, including who made the request, and the ownership details of the property" (emphasis added). "All details" would include that the complainant had allegedly requested that the order for non-compliance with the by-law be delayed because of his upcoming candidacy.

The information in question also included:

- that a zoning file was being compiled against the complainant's property because it was a residential building and a business was being operated from it,
- that an Order was in the process of being issued to the complainant listing infractions of the Municipality's housing by-law,
- that a second zoning file was being started for the illegal use of the property as a four-family dwelling, and
- the fact that the complainant had been identified as being responsible for the alleged unlawful condition of the property.

The Municipality took the position that "... the information that was provided respecting the infractions against the property and outlining the municipal address of the property, does not constitute personal information, but rather property information ..." The Municipality cited a

number of Orders issued by this Office in support of its position, including Orders M-15 and M-176.

The records at issue in M-15 were copies of work orders which had been issued by a municipality against various residential rental properties. Commissioner Tom Wright concluded that "... the municipal addresses of the properties in question as well as information concerning repairs do not constitute personal information as defined in the Act."

In M-176, Inquiry Officer Holly Big Canoe stated: "I find that the fact of being identified as responsible for the alleged unlawful condition of a property is 'other personal information' for the purposes of subparagraph (h) of the definition ..."

Based on the above, we concur with the Municipality that the municipal address of the complainant's property and the infractions against it did not constitute "personal information", as defined in section 2(1) of the Act.

However, it is also our view that the complainant's name together with the fact that he owned the property in question, that he had allegedly requested that the order for non-compliance with the zoning by-law be delayed because of his upcoming candidacy, and that he was identified as being responsible for the alleged unlawful condition of the property met the requirements of paragraph (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The municipal address of the complainant's property and the infractions against it did not constitute "personal information", as defined in section 2(1) of the Act.

The complainant's name together with the fact that he owned the property in question, that he had allegedly requested that the order for non-compliance with the zoning by-law be delayed because of his upcoming candidacy, and that he was identified as being responsible for the alleged unlawful condition of the property was "personal information", as defined in section 2(1) of the Act.

Issue B: Was the personal information disclosed to the Councillor, in compliance with section 32 of the Act?

Under the Act, personal information in the custody or under the control of an institution cannot be disclosed except in the specific circumstances outlined in section 32.

The Municipality submitted that section 32(c) of the Act permitted the disclosure of the complainant's personal information to the Councillor. Section 32(c) states: "An institution shall not disclose personal information in its custody or under its control except ... for the purpose for which it was obtained or compiled or for a consistent purpose."

Section 33 of the Act further states that:

The purpose of a use or disclosure of personal information that has been collected directly from the individual to whom the information relates is a consistent purpose under clauses 31 (b) and 32 (c) only if the individual might reasonably have expected such a use or disclosure.

The Municipality explained that the issue of multiple unit dwellings was a controversial matter in the area of the complainant's property. It added that the property in question was a multiple unit dwelling, and that the request for a delay related to the complainant's non-compliance with the provisions of the zoning by-law that dealt with multiple unit dwellings.

The Municipality submitted that the complainant's name was provided to the Councillor "... in order that the Councillor could participate fully in discussions respecting the unusual request for a deferral of a Work Order on a property in his Ward." The Municipality further submitted that it advises the ward councillor "of any special consideration either being granted or requested in respect of a property in his or her Ward, in order that the Ward Councillor can properly deal with any enquiries he or she may receive respecting the request under consideration."

The Municipality also stated that it is the practice of the Buildings and Inspections Department to share information concerning building or zoning infractions with the respective ward councillor, where, in the judgement of the Area Manager, special circumstances exist or "where it anticipates problems." The Municipality stated that, in this case, the special circumstances were the complainant's "forceful demand" that the order for non-compliance be delayed because of his upcoming candidacy. According to the Municipality's Area Manager, the complainant stated: "Don't you dare issue an order against my property."

The Municipality added that staff of the Department "were concerned that the complainant would also approach the ward councillor, and the staff wished to ensure that the Councillor was aware of the potentially controversial situation and the Department's decision as well as its rationale, in the event that he received enquiries."

The Municipality stated that the Department notified the Councillor "to make him aware of the Department's approach and to ensure consistency in enforcement. The Department is aware that many property owners approach their Councillors for assistance, and therefore consistency in enforcement was of concern to the Department."

In summary, therefore, the Municipality's position is that it disclosed the complainant's personal information because the complainant had requested special consideration with respect to his property (i.e., a delay in issuing an order to comply due to his upcoming candidacy), and the Councillor needed this information to assist him in dealing with any enquiries he received regarding the complainant's request. The Municipality was also concerned that since many property owners approached their Councillor for assistance -- presumably to favourably influence their request for special consideration -- consistency in enforcement of the by-law was of concern to the Department.

In our view, the Municipality would have obtained or compiled the fact that the complainant had allegedly requested the Department to delay issuing an order to comply against his property, in order to decide whether or not to grant the request, for the ultimate purpose of administering its zoning by-law.

In order for the Municipality's disclosure of the complainant's personal information to be in compliance with section 32(c) of the Act, the information must have been disclosed either to assist the Municipality in deciding whether or not to grant the complainant's request, or for a purpose that was consistent with deciding whether or not to grant the complainant's request. And, since the Municipality collected this information directly from the complainant, a consistent purpose is one which the complainant would need to have reasonably expected.

The Municipality has not provided us with any information demonstrating that the Councillor played a role in deciding whether or not to grant a property owner's request to delay the issuance of an order to comply. Thus, it is our view that the Municipality's disclosure of the complainant's personal information to assist the Councillor in dealing with any enquiries he received regarding the complainant's request was not for the purpose for which it had obtained this information.

The Municipality contended that, in requesting the deferral, "the complainant should reasonably expect that all details of such an unusual request would be discussed with officials within the Department of Buildings and Inspections and with the Ward Councillor."

We concur with the Municipality in that the complainant could have reasonably expected that the details of his request would have been discussed with officials of the Department, as those very officials were the employees of the Municipality responsible for either granting or denying the complainant's request. However, we do not concur with the Municipality that the complainant should have reasonably expected that the details of his request would be discussed with the Councillor.

With regard to the complainant's reasonable expectation of this disclosure, the complainant stated: "I am deeply disappointed that the alleged request was being used as a poor excuse to leverage the rationale to further discuss the matter with anyone; including (the named Councillor)."

Based on all of the above, it is our view that the Municipality's disclosure of the complainant's personal information to the Councillor was not in compliance with section 32(c) of the Act. We also reviewed the remaining provisions of section 32, and found that none applied.

Conclusion: The Municipality's disclosure of the complainant's personal information to the Councillor was not in compliance with section 32 of the Act.

SUMMARY OF CONCLUSIONS

- The municipal address of the complainant's property and the infractions against it did not constitute "personal information", as defined in section 2(1) of the Act.

The complainant's name together with the fact that he owned the property in question, that he had allegedly requested that the order for non-compliance with the zoning by-law be delayed because of his upcoming candidacy, and that he was identified as being responsible for the alleged unlawful condition of the property was "personal information", as defined in section 2(1) of the Act.

- The Municipality's disclosure of the complainant's personal information to the Councillor was not in compliance with section 32 of the Act.

RECOMMENDATIONS

We recommend that the Municipality take steps to ensure that personal information is disclosed only in accordance with section 32 of the Act.

Within six months of receiving this report, the Municipality should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation.

Original signed by: _____
Ann Cavoukian, Ph.D.
Assistant Commissioner

June 19, 1995 _____
Date



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

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INVESTIGATION REPORT

INVESTIGATION I94-080M

A TOWNSHIP

August 16, 1995



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a named township (the Township).

An individual complained that the Township had disclosed to the public a copy of an Appointment of Voting Proxy containing her personal information. The individual was concerned that the disclosure was not in accordance with the provisions of the Municipal Freedom of Information and Protection of Privacy Act (the Act).

The Township acknowledged that it had disclosed all copies of the Appointment of Voting Proxy used in the election, to the members of council shortly after the municipal elections. The Township advised us that it had allowed the press to photograph some of the copies of the Appointment of Voting Proxy, but stated that the press had not published these photographs. The Township also advised that the copies of the Appointment of Voting Proxy would have been made available to any member of the public who might have asked to see them because, in its view, they are public records and thus, section 27 of the Act applied.

Our office conducted an investigation into the complaint and issued a draft report. In response, the Township advised that it was relying on information provided by the Ministry of Municipal Affairs (Municipal Affairs) and Municipal World (a publisher of the Appointment of Voting Proxy Form). The Township also indicated that it had provided both Municipal Affairs and Municipal World with a copy of the draft report. The Township asked that we consider the comments it had received from Municipal World and that we consult with Municipal Affairs. The views of Municipal Affairs as well as those of the Township and Municipal World have all been considered in arriving at our conclusions in this report, along with the views of the complainant as expressed in her original letter of complaint. (The complainant has not made any representations in response to the draft report.)

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Does the copy of the Appointment of Voting Proxy contain the complainant's "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Does section 27 of the Act apply to the copy of the Appointment of Voting Proxy? If no,
- (C) Did the Township disclose the complainant's personal information in compliance with section 32 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Does the copy of the Appointment of Voting Proxy contain the complainant's "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information" as recorded information about an identifiable individual, including,

- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The Township takes the position that the information included in the Appointment of Voting Proxy does not fall under the definition of "personal information."

We have examined the Appointment of Voting Proxy form used by the Township during the last election. This form enables an individual to appoint another person to vote on his/her behalf in a municipal election. Once completed, the Appointment of Voting Proxy contains the elector's name, full address, and the fact that the elector is making an appointment. It would also contain the name and address of the individual appointed to act as the elector's proxy, and whether the two individuals are related.

The complainant advised that she was the person who had been appointed as proxy and that the form was completed in full. Although we were unable to examine the actual document in question, based on the information before us, we are satisfied that the completed Appointment of Voting Proxy would have contained the complainant's personal information as defined in paragraph (h) of the definition of "personal information," in section 2(1) of the Act.

Conclusion: The completed Appointment of Voting Proxy would have contained the complainant's personal information as defined in section 2(1) of the Act.

Issue B: Does section 27 of the Act apply to the copy of the Appointment of Voting Proxy?

Section 27 of the Act states:

This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public.

"This Part" refers to the privacy provisions contained in Part II of the Act.

1. Appointment of Voting Proxy Form - Notations

The Appointment of Voting Proxy Form is Form 24, prescribed by regulation under the Municipal Elections Act (the MEA). The Appointment of Voting Proxy consists of an original and a copy. It is our understanding that the Appointment of Voting Proxy is certified by the clerk prior to election day, and the individual appointed as the proxy keeps the original which he/she later presents on election day in order to obtain a ballot. According to the Township and Municipal World, the copy is retained by the clerk, while the original is ultimately placed in the ballot box.

The Township, in arguing that the copy of the Appointment of Voting Proxy is a public record, refers to the notation which appears on the bottom of the copy of the form. This notation is not part of the form as prescribed by regulation, but has been placed there presumably for instructional purposes by the publisher. The notation on the copy reads:

This form contains personal information collected and maintained specifically for the purpose of creating a record available to the general public and is open to inspection by any person upon request in the office of the clerk during normal office hours.

We note that the **original** form also contains a statement which has been placed on the form by the publisher. This statement reads:

This form, once placed in the ballot box in the custody of the clerk, is not open to public inspection, except under the order of a judge. Municipal Elections Act, R.S.O. 1990, s. 84(1) and s. 105(1).

As noted above, it is the original Appointment of Voting Proxy which remains with the individual. The statement contained at the bottom of the copy would only be seen if the individual actually looked at the copy (which presumably the individual would have no need to do). Given that the original states that the "form" (presumably in its entirety, not just the "original") will not be open to public inspection, and the fact that it is the **original** which the individual retains, it is our view that an individual completing the proxy form would have the impression that the information on both the original and the copy of the Appointment of Voting Proxy would be held in strictest confidence.

2. Legislative Provisions of the MEA

1) Section 105

Section 105(1) of MEA deals with access to the contents of the ballot box. It reads:

No person shall be allowed to inspect the contents of a ballot box in the custody of the clerk except under the order of a judge.

Section 84 outlines what is to be placed in the ballot box:

The deputy returning officer shall place in the ballot box, the polling lists, the packets containing the ballots, and all other documents or packets that served at the election, except,

- (a) the original statement;
- (b) the oath of the poll clerk;
- (c) the oath of the person, if any, chosen to deliver the ballot box to the clerk.

It is not disputed that the original Appointments of Voting Proxy are placed in the ballot box. However, it is the position of Municipal World that the current wording of section 105 implies that copies of voting proxies should be publicly available.

In its submission, Municipal World argued that based on the difference in wording between section 105(1) and earlier legislation, the legislature intended that copies of voting proxies be made publicly available. The earlier legislation read:

No person shall be allowed to inspect any ballot or other document relating to an election in the custody of the clerk except under the order of a judge.

Municipal World posited that since the only change to the section was to delete the reference to "other document," it was the intention of the legislature to place documents, other than the contents of the ballot box, in the public domain.

We asked Municipal Affairs to provide us with information respecting the change in wording, as well as the general intention of section 105(1). Municipal Affairs stated that the only information available respecting the intention of section 105(1) was the following:

... that the requirement for judicial permission to inspect election documents be restricted to the inspection of the actual ballots (Ministry correspondence Nov. 20, 1973).

Municipal Affairs further added that:

The current intention of the section is that public access only be limited in respect of the contents of the ballot box. Ballot boxes include items that may need to be reviewed as part of the recount or court proceeding and as such their contents should not be distributed except by court order.

Based on the limited information provided, we were unable to conclude that the wording in section 105(1) was intended to make copies of the Appointment of Voting Proxy public documents. In our view, the deletion of the words "other documents relating to an election" are not sufficient to find that copies are intended to be public records. In addition, the information provided by Municipal Affairs is not persuasive. According to the excerpted Ministry correspondence, the purpose of section 105 is to require court permission only for inspection of

ballots. However, the wording of section 105 refers to the "contents of the ballot box" which is defined by section 84 to include more than just ballots.

With respect to Municipal Affairs' other comment, the Ministry appears to be arguing that section 105(1) is intended to protect the **contents** of the ballot box, as opposed to the actual information contained therein. Without more information respecting the purpose of section 105(1), it is difficult to accept that the same information which is protected and available only upon court order should nonetheless be a public record with absolutely no privacy protection. In our view, section 105(1) is a strong indicator that the information contained on the copy of the Appointment of Voting Proxy is not intended to be a public record, as contemplated by section 27.

2) Section 104

Part I of the MEA deals with voting procedures and election documents. Proxy voting is provided for under Part I, section 73 of the MEA. We note that there is no provision in Part I of the MEA respecting access to copies of voting proxies.

The Township and Municipal Affairs have both referred to section 104(3) of the MEA as support for the view that voting proxies should be available to the public. Section 104(3) reads:

Subject to subsection (1), the clerk shall retain in his or her possession all oaths, nominations, qualification documents, statements of the votes cast, and other documents relating to an election until the successors to the persons elected at such election have taken office, and may then destroy them. R.S.O. 1980, c. 308, s. 89(2).

Municipal Affairs has also referred specifically to the list of electors and to section 107 of the MEA which prohibits the commercial use and sale of lists of electors. It is our view that the analogy between voting proxies and lists of electors is not compelling. Electors lists are posted prior to the election pursuant to the MEA and, while they may remain with the clerk under section 104(3), the electors list which is inserted in the ballot box on election day indicates whether an elector has in fact voted. The situation regarding voting proxies is different in that the original and the copy of the voting proxy contain the same identical information.

The mere fact that the copies of the voting proxies are in the possession of the clerk does not make them a public record. We note that an earlier section of the MEA, which stated that nomination papers were to remain with the clerk, was amended in 1990 to expressly provide that nomination papers are to be open to inspection by a person during the clerk's normal office hours. Thus, it would appear that the legislature felt it was necessary to draft an explicit provision in order to provide for access.

Similarly, Parts II and III of the MEA which deal with election finances, allow for inspection of documents by the public. Section 155(1) provides that documents, financial statements, reports and declarations filed with the clerk under this Part are public records and may be inspected by any person upon request at the office of the clerk during normal office hours. Section 199(1) contains a comparable provision.

Given the presence of certain express access provisions in the MEA respecting certain documents, it is clear that the legislature turned its mind to this issue. Accordingly, in the absence of an express access provision respecting access to voting proxy copies, we cannot conclude that section 104(3) renders the copies of voting proxies public records.

3) Section 111

The Township referred us to the provisions of section 111 of the MEA:

Under Section 111 of the Municipal Elections Act it states what is to be secret including the act of voting. It does not include a listing of documents not addressed in Section 84, "What to be placed in ballot box."

Section 111 of the MEA sets out the basic principle that the act of voting must be conducted in secret and prohibits persons from communicating or inducing others to disclose how an elector has voted. Section 111 is set out below:

- (1) Every person in attendance at a polling place or at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting.
- (2) No person shall interfere or attempt to interfere with an elector when marking his or her ballot paper, or obtain or attempt to obtain at the polling place information as to how an elector is about to vote or has voted.
- (3) No person shall communicate any information obtained at a polling place as to how an elector at such polling place is about to vote or has voted.
- (4) No person shall directly or indirectly, induce or attempt to induce an elector to show his or her ballot paper after the elector has marked it so as to make known to any person how he or she has voted.
- (5) Subject to section 69, an elector shall not show his or her ballot paper, when marked, to any person so as to make known how the elector voted.
- (6) No person who has voted at an election shall, in any legal proceeding to question the election or return, be required to state how or for whom he or she has voted. R.S.O. 1980, c. 308, s. 95.

It is our view that section 111 of the MEA does not support the view that copies of voting proxies should be made public.

3. Section 53(2) of the Act

In its original submissions, the Township raised the confidentiality provision in section 67 of the provincial Freedom of Information and Protection of Privacy Act. However, the applicable legislation in this case is the municipal Act. Section 53(2) of the municipal Act contains the following confidentiality provision:

(2) The following confidentiality provisions prevail over this Act:

1. Section 105 of the Municipal Elections Act.

...

Section 53(2) states clearly that section 105 of the MEA prevails over the provisions of the municipal Act. However, since copies of the Appointment of Voting Proxy are not placed in the ballot box, and only the contents of a ballot box are protected from inspection by section 105, copies are not covered by section 105; accordingly, section 53(2) does not apply.

4. All Information on Voter Proxies is Public Information

The Township advised that all the information contained within the Appointment of Voting Proxy was public information obtainable from the Assessment Roll as well as the voters list prepared by the Ministry of Finance.

Similarly, in its submissions, Municipal World wrote that a proxy form constituted an amendment to the list of electors -- a document that is in the public domain. Municipal World added that the proxy form contained no information about the person(s) for whom the elector or representative intended to vote and therefore did not constitute an invasion of privacy regarding the secrecy of voting.

In considering these points we noted that some of the information on the Voting Proxy does not appear publicly elsewhere -- the Assessment Roll does not list the electors' appointing proxies, or electees who are appointed proxies. Neither does the voters list prepared by the Ministry of Finance contain this information. Therefore, the information at issue is not in fact the same.

5. Electoral Scrutiny

In response to the draft report, the Township advised that it had consulted with Municipal Affairs and Municipal World, since they produced the forms used by the Township. The Township stated:

Upon speaking with representatives from the Ministry of Municipal Affairs, all were of the opinion that the proxy vote applications, which remain in the possession of the Clerk, were public documents. The main reason for this, they believe, is that the municipal elections process is elector regulated and the elector must have access to some of the election documents during and immediately after the conclusion of the election to ensure compliance with the provisions of the election regulations and legislation.

In its submissions to the draft report, Municipal Affairs wrote:

Municipal government is structured with an assumption that an informed and motivated public will accept responsibility for the enforcement of legislation that regulates municipal conduct. The Municipal Elections Act provides for enforcement by an elector, with a few exceptions, not by a provincial agency.

To facilitate this enforcement it is necessary that relevant election documents be available.

The certified copy of the proxy that remains in the possession of the Clerk is one such document that is available for inspection to ensure the integrity of the election. In making the proxy form available, it permits the public to scrutinize the conduct of the election and provide the necessary checks and balances to the process. Only through access to the proxy form can an elector determine whether all steps described above have been complied with.

We share the view that electoral scrutiny is extremely important. However, in our view, there are other less intrusive means by which to achieve this objective. As noted earlier, individuals may apply to the court under section 105(1) to examine the original voting proxies. Section 105(1) allows for the inspection of the contents of a ballot box upon the order of a judge. Section 105(2) provides that such an order may be made where a judge is satisfied by affidavit or other evidence that the inspection is required for the purpose of maintaining a prosecution for an offence, or corrupt practice, or of taking proceedings for contesting an election or return.

In addition, voting proxies can be checked by a scrutineer on election day or by the clerk prior to or after the election. Presumably the clerk maintains a list of the voting proxies, since an individual can only serve as a proxy once, unless he or she is acting for family members.

In summary, we are unable to conclude that the information contained in the copies of the voting proxies should not be afforded any privacy protection. In reaching this conclusion we could not ignore the strict protection given to the same information by section 105(1) of the MEA. This, together with the absence of any explicit access provision relating to copies of voting proxies, compels us to conclude that section 27 of the Act does not apply.

Conclusion: Section 27 of the Act does not apply to the copies of the Appointment of Voting Proxy.

Issue C: Did the Township disclose the complainant's personal information in compliance with section 32 of the Act?

Section 32 of the Act states that an institution shall not disclose personal information except under certain specific circumstances.

Although the Township did not make any submissions under section 32 of the Act, we have reviewed the provisions of this section. It is our view that none of the provisions of section 32 apply. Therefore, the Township's disclosure was not in compliance with section 32 of the Act.

Conclusion: The Township's disclosure of the complainant's personal information was not in compliance with section 32 of the Act.

SUMMARY OF CONCLUSIONS

- The completed Appointment of Voting Proxy would have contained the complainant's personal information as defined in section 2(1) of the Act.

- Section 27 of the Act does not apply to the copies of the Appointment of Voting Proxy.
- The Township's disclosure of the complainant's personal information was not in compliance with section 32 of the Act.

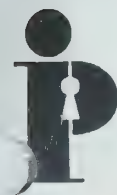
RECOMMENDATION

We recommend that the Township cease disclosing copies of the Appointment of Voting Proxy, effective immediately.

Within six months of receiving this report, the Township should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation.

Original Signed by:
Ann Cavoukian, Ph.D.
Assistant Commissioner

August 16, 1995
Date



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

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INVESTIGATION REPORT

INVESTIGATION I94-083M

A PUBLIC SCHOOL BOARD



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Background of the Complaint

This investigation was initiated as a result of a complaint concerning a named public school board (the Board).

The complainant, the parent of a student attending one of the Board's secondary schools complained that a psychological and personality test had been done on her daughter without her consent. The complainant stated that the Board, through this psychological and personality test had collected her daughter's personal information which she felt was not necessary and thereby may have compromised her daughter's privacy.

It was the complainant's view that the Board's collection contravened the Municipal Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Did the Board collect the personal information, in compliance with section 28(2) of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information", in part, as:

"personal information" means recorded information about an identifiable individual, including,

...
(e) the personal opinions or views of the individual...

...
(h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The information in question was information about the complainant's daughter and her opinions as provided on her psychological and personality test. It is our view that this information met the requirements of paragraphs (e) and (h) of the definition of "personal information", in section 2(1) of the Act.

Conclusion: The information in question was "personal information", as defined in section 2(1) of the Act.

Issue B: Did the Board collect the personal information, in accordance with section 28(2) of the Act?

Section 28(2) of the Act states:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or **necessary to the proper administration of a lawfully authorized activity** [emphasis added].

The Board stated that psychological and personality testing and the resulting collection of a pupil's personal information was necessary to the proper administration of a lawfully authorized activity, namely, the identification of programs and special education programs and services appropriate to the learning abilities and needs of the pupil.

The Board stated that in this case, it had relied on sections 8(3)(a) and (b) of the Education Act (the EA), and sections 2(3)(a) and (b) of Regulation 305, under the EA, Special Education Identification Placement and Review Committees and Appeals, as its authority to conduct the psychological and personality test and to collect the complainant's daughter's personal information.

Sections 8(3)(a) and (b) of the EA states:

- (3) Identification programs and special education programs and services.--The Minister shall ensure that all exceptional children in Ontario have available to them in accordance with this Act and the regulations, appropriate special education programs and special education services without payment of fees by parents or guardians resident in Ontario, and shall provide for parents or guardians to appeal the appropriateness of the special education placement, and for these purposes the Minister shall,
 - (a) require school boards to implement procedures for early and ongoing identification of the learning abilities and needs of pupils, and shall prescribe standards in accordance with which such--procedures be implemented; and

- (b) in respect of special education programs and services, define exceptionalities of pupils, and prescribe classes, groups or categories of exceptional pupils, and require boards to employ such definitions or use such prescriptions as established under this clause.

Sections 2(3)(a) and (b) of Regulation 305 states:

- (3) Where a committee is engaged in identifying a pupil as an exceptional pupil or in determining the recommended placement of such a pupil, the committee shall obtain and consider an educational assessment of the pupil and,
 - (a) where the committee determines that a health assessment or a psychological assessment or both of the pupil are required to enable the committee to make a correct identification or determination in respect of the pupil and with the written permission of the parent, obtain, and consider a health assessment of the pupil by a legally qualified medical practitioner and obtain and consider a psychological assessment of the pupil;
 - (b) where, in the opinion of the committee, it is practicable so to do, the committee shall with the consent of a parent of the pupil, interview the pupil.

The Board stated that some time in 1993, the complainant had requested the Board to conduct an assessment on her daughter for the purpose of assisting school personnel in the planning the school program for her daughter and to identify any special programs for her. Before administering the assessment, the Board obtained a signed consent from the complainant that was witnessed and signed by both the principal of the school where the daughter was attending at the time and by a special services contact.

An assessment, i.e., a psychological and personality test was subsequently conducted but the complainant's daughter did not complete the test and therefore, no special programs were identified for her.

It is our view that the administration of student psychological assessment and personality testing in order to identify programs and special education programs and services for students in accordance with the EA and its regulations was a lawfully authorized activity.

It is also our view, that in order to make a proper assessment to identify appropriate programs and services, it was necessary for the Board to collect students' personal information through the conduct of the psychological assessment and personality testing.

Since the complainant's daughter did not complete the test, the Board did not complete her assessment. However, it is our view that the Board's collection of the complainant's daughter's personal information in order to identify appropriate programs for her would have been necessary to the proper administration of a lawfully authorized activity and was, thus, in compliance with section 28(2) of the Act.

Conclusion: The Board collected the complainant's daughter's personal information in compliance with section 28(2) of the Act.

Other matters

The complainant also believed that there had been a previous psychological testing of her daughter without her consent at another of the Board's schools. Although she had been informed in response to an access request that the Board had created a record of a personal questionnaire but that this had been destroyed in accordance with its "confidential disposal of personal information procedures", the complainant believed that the record was still being maintained and that the Board was refusing to disclose this record to her.

We informed the complainant of the procedures under the Act if she believed that a record in response to an access request existed.

SUMMARY OF CONCLUSIONS

- The information in question was "personal information", as defined in section 2(1) of the Act.
- The Board collected the complainant's daughter's personal information in compliance with section 28(2) of the Act.

Original signed by: _____
Susan Anthistle
Compliance Review Officer

May 24, 1995
Date



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

INVESTIGATION REPORT

INVESTIGATION I94-084P

THE MINISTRY OF HOUSING

June 8, 1995



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of Housing (the Ministry). The complainant, an employee of the Ministry, was concerned that in March, 1993, her then acting manager (the Manager) had disclosed her personal information to her Director and to the Ministry's Co-ordinator, Workplace Discrimination and Harassment Prevention Program (the WDHP Co-ordinator), without her consent. The complainant believed that the disclosures had breached the Freedom of Information and Protection of Privacy Act (the Act).

The complainant advised that the disclosures had arisen from her work situation. According to the complainant, her supervisor had confided to her that he was in love with a clerk in their department. He had continuously interrupted her work by talking about his feelings for the clerk. In the complainant's view, her supervisor was sexually harassing the clerk, as the clerk had not returned the supervisor's affections.

The complainant had then discussed her work situation with the Manager. Since the complainant felt that the constant interruptions by her supervisor was negatively affecting her work performance, she had asked the Manager for a transfer out of the department. The complainant said that she had requested that their discussion be kept confidential, and that her Manager had agreed. However, her Manager later informed the Director and the WDHP Co-ordinator that the complainant had made allegations of sexual harassment concerning her supervisor and the clerk. During the course of her investigation, the WDHP Co-ordinator had contacted the complainant who had declined to answer any questions. The WDHP investigation was subsequently dropped.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Was the personal information disclosed in compliance with section 42 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information" as recorded information about an identifiable individual, including,

...

- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

It is our view that the complainant's name together with the fact that she had complained about an alleged harassment of the clerk by her supervisor, was personal information as defined in section 2(1) of the Act.

Conclusion: The information in question was "personal information", as defined in section 2(1) of the Act.

Issue B: Was the personal information disclosed in compliance with section 42 of the Act?

Under the Act, an institution cannot disclose personal information in its custody or under its control except in the circumstances outlined in section 42.

Disclosure to the WDHP Co-ordinator

The Ministry advised that according to the WDHP Directive and Guidelines, the Manager had been required to disclose the complainant's name, and the details of the information concerning the harassment, to the WDHP Co-ordinator. The Ministry was of the opinion that a failure to take such action would have constituted a violation of the Ontario Human Rights Code, the Collective Agreement, and the Public Service Act.

The Ministry further stated that under the WDHP Directive, managers are responsible for maintaining a work environment that is free from harassment and discrimination. Whether or not an employee wishes a matter to be investigated, when a possible instance of harassment or discrimination is brought to a manager's attention, that manager is required to take action. As the alleged victim had not come forward, the WDHP Co-ordinator was advised of the complainant's status as the only known witness. The Ministry also stated that the Manager did not recall the complainant requesting confidentiality.

The Ministry identified the following statements from the WDHP Directive and Guidelines, as supporting the disclosure:

Managers and Supervisors are responsible for initiating, in consultation with appropriate individuals, remedial procedures with respect to discrimination harassment or reprisal as quickly as possible upon becoming aware of it, **whether or not a complaint has been filed**; (emphasis added)

A manager responding to an informal complaint should consult others, such as advisors, investigators, human resources staff, or the WDHP unit before handling an issue...

In our draft report, we stated that it was our view, however, that the above statements did not provide any basis for the disclosure of the complainant's identity in this particular situation, nor was there any support for the disclosure of her identity elsewhere in the WDHP materials provided to us by the Ministry. The Ministry also had not referred us to any particular provisions in the Collective Agreement, the Ontario Human Rights Code, or the Public Service Act that specifically supported the disclosure.

In our draft report, we acknowledged that the Ministry had obligations under the WDHP Directive and the Human Rights Code to deal with the complainant's allegations and that there may be situations or times when the identity of a third party i.e. a witness, is required. For example, in this case, after the WDHP Co-ordinator had contacted the complainant's supervisor and the clerk, the investigation was dropped, since the clerk apparently did not feel that any harassment had occurred. Had the investigation proceeded, it may well have been necessary for the Manager to have then disclosed the complainant's name in order to assist in the investigation.

However, it was our view that the Ministry had not demonstrated that in this case, it was necessary for the Manager to disclose the complainant's identity when he initially informed the WDHP Co-ordinator of the situation concerning the complainant's supervisor and the clerk.

In our draft report, we stated that the Ministry had not indicated the section of the Act that it had relied on for the Manager's disclosure to the WDHP Co-ordinator. In its representations on the draft report, the Ministry stated that it had relied on section 42(d) of the Act for the disclosure. This section states that:

An institution shall not disclose personal information in its custody or under its control except,

- (d) where disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and where disclosure is necessary and proper in the discharge of the institution's functions;

In its representations, the Ministry submitted that the WDHP Co-ordinator required the information in the performance of her duties as the individual responsible for implementing the WDHP directive.

The Ministry also stated that "given the object of the WDHP Directives and Guidelines and the relevant legislation is to ensure a harassment-free workplace, inquiries will often extend beyond the party who is the subject of the alleged harassment. In this case, the investigator went on to question the complainant, who refused to participate in the investigation." It was the Ministry's view that, "Therefore, whether or not the clerk and the supervisor had denied or admitted to the allegations, the complainant's evidence would have been required, in order to ensure that all of the relevant evidence was brought to light."

While we accept the Ministry's position that an investigation can extend beyond the party who is the subject of the alleged harassment and that it may be necessary to obtain the evidence of other individuals, it remains our view that in the circumstances of this case, the Manager did not need to disclose the complainant's name when he first discussed the situation with the

WDHP Co-ordinator. It remains our view that at this stage, the WDHP Co-ordinator did not require the identity of the complainant in order to perform her duties under the WDHP directive, and, therefore, the Manager's disclosure of the complainant's personal information to the WDHP Co-ordinator was not in compliance with section 42(d) of the Act.

We have examined the remaining provisions of section 42 of the Act and it is our view that none applied in the circumstances of this case.

Disclosure to the Director

The complainant was also concerned about the Manager's disclosure of her name together with the details of her complaint to her Director without her consent.

In our draft report, we stated that we had asked the Ministry for its position on this disclosure but had received no submissions. However, based on what information we had, it was our view, that the Manager's disclosure to the Director, in the circumstances of this case, was not in compliance with the Act.

However, in its representations on our draft report, the Ministry stated that it had relied also on section 42(d) of the Act for this disclosure. The Ministry advised that the Director was responsible for making final decisions on long term assignments (or re-assignments) in consultation with the Manager. It was the Ministry's view that in this case, in order for the Director to consider the complainant's request for a transfer out of the department, it was necessary for him to know the reason for the request, i.e., that the constant interruptions by her supervisor was affecting her work. The complainant was subsequently re-assigned to a new client group, reporting to a new supervisor.

We have considered the Ministry's representations on this disclosure and agree that in order for the Director to consider and discuss the complainant's request for a transfer, it was necessary for the Manager to disclose to him the details relating to the request. It is, therefore, our view that the Manager's disclosure to the Director was to an employee who needed the complainant's personal information in the performance of his duties and the disclosure was necessary and proper in the discharge of the Ministry's administrative functions. The disclosure was, thus, in compliance with section 42(d) of the Act.

Conclusions: The Manager's disclosure of the complainant's personal information to the WDHP Co-ordinator was not in compliance with section 42 of the Act.

The Manager's disclosure of the complainant's personal information to the Director was in compliance with section 42 of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was "personal information", as defined in section 2(1) of the Act.

- The Manager's disclosure of the complainant's personal information to the WDHP Co-ordinator was not in compliance with section 42 of the Act.
- The Manager's disclosure of the complainant's personal information to the Director was in compliance with section 42 of the Act.

RECOMMENDATION

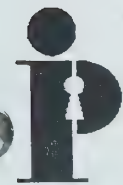
We recommend that the Ministry take steps to ensure that staff are reminded of the limited circumstances under the Act which permit the disclosure of personal information.

Within six months of receiving this report, the Ministry should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation.

Original Signed by: _____
Susan Anthistle
Compliance Review Officer

June 8, 1995
Date

CARON
IP
-136



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

INVESTIGATION REPORT

INVESTIGATION I94-085P

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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Metropolitan Toronto Housing Authority (the MTHA) of the Ministry of Housing (the Ministry).

The complainant stated that she was a tenant in a MTHA building and that she was having a problem obtaining a parking sticker for her car. She had been told that she had to provide her driver's licence, proof of vehicle ownership, and proof of car insurance to obtain a sticker.

The Ministry acknowledged that the MTHA's request for a driver's licence and car insurance was not necessary, and that they would not be requested in future. However, it was still necessary to provide proof of vehicle ownership in order to obtain a sticker. The complainant believed that providing proof of residency and the car's plate number should be sufficient. She was concerned that the MTHA's practice of collecting proof of vehicle ownership was contrary to the provisions of the Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined by section 2(1) of the Act? If yes,
- (B) Was the MTHA's collection of this personal information in compliance with section 38(2) of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined by section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The information in question was proof of vehicle ownership such as a motor vehicle registration and would include such details as the name of the individual and that he or she was the owner of a particular vehicle.

It is our view that this information met the requirements of paragraph (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was personal information as defined in section 2(1) of the Act.

Issue B: Was the MTHA's collection of this personal information in compliance with section 38(2) of the Act?

Under the Act, an institution cannot collect personal information except in compliance with section 38(2) of the Act which states:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity. (emphasis added)

The Ministry stated that the MTHA's collection was in accordance with the MTHA Parking Management Program (the Program) which "works under the authority of the Municipal By-laws". In this particular case, the MTHA was relying on the Corporation of Scarborough By-Law Number 24165. This By-Law prohibited the parking or leaving of motor vehicles on private property without the consent of the owner or occupant of the property and on property owned or occupied by the Corporation of the City of Scarborough or any local board without the consent of the Corporation or local board. Under the By-law, an "occupant" is "the tenant of the real property...whose consent under the by-law extends only to the control of the land of which such occupant is a tenant and any parking spaces allotted to such occupant under a lease or tenancy agreement;"

The Ministry advised us that the Program was created to provide residents and staff the best parking facilities possible. MTHA Security Staff had been trained and certified as Municipal Law Enforcement Officers (MLEOs). As MLEOs, they were authorized to enforce MTHA parking regulations by tagging and towing of vehicles, pursuant to By-Law 24165.

We agree with the Ministry that administering the Program which included parking control was a lawfully authorized activity. However, the Ministry must also demonstrate that the collection of the personal information in question was necessary to the proper administration of this lawfully authorized activity.

The Ministry informed us that MTHA residents did not pay for parking. The Ministry submitted that the MTHA lease clearly stated that a tenant had "no right to use the parking facilities". MTHA parking space was limited. Certain rules and regulations had been set up "to provide residents with parking space on a first come, first served basis".

The Ministry submitted that in order to qualify for a parking sticker, both proof of residency and personal ownership of a vehicle was required. The "structure" of the program requiring tenants to show a personal need for a parking space for their vehicle had been chosen "at the request of the community in order to prevent non-residents from parking their vehicle on MTHA property". The Ministry further stated that this "decision resulted in the establishment of a sticker system where stickers would only be given to those tenants who own a vehicle, and only for those vehicles".

The Ministry stated that, therefore, given the requirement under the Program for both residency and personal ownership, the only document that could be requested to provide proof of this was the motor vehicle registration and that the collection of this information was "fundamental to the proper administration of the program".

It is our view that since the Program required proof of both residency and personal ownership of a vehicle, it was necessary for the MTHA to collect motor vehicle registration information. Therefore, the MTHA's collection was necessary to the proper administration of a lawfully authorized activity, i.e., the management of the Program, in compliance with section 38(2) of the Act.

Conclusion: The MTHA's collection of proof of vehicle ownership was in compliance with section 38(2) of the Act.

Other Matters

During the course of this investigation, we noted that proper notice for the collection of personal information for parking stickers had not been given to tenants as required by section 39(2) of the Act. This section states:

Where personal information is collected on behalf of an institution, the head shall, unless notice is waived by the responsible minister, inform the individual to whom the information relates of,

- (a) the legal authority for the collection;
- (b) the principal purpose or purposes for which the personal information is intended to be used; and
- (c) the title, business address and business telephone number of a public official who can answer the individual's questions about the collection.

We were advised by the Ministry that the MTHA had been informed that its form for collecting personal information must comply with the notice provisions of section 39(2) of the Act. We understand, however, that the form has not yet been amended.

Conclusion: The MTHA's form for collecting personal information was not in compliance with section 39(2) of the Act

SUMMARY OF CONCLUSIONS

- o The information in question was personal information as defined in section 2(1) of the Act.
- o The MTHA's collection of proof of ownership was in compliance with section 38(2) of the Act.
- o The MTHA's form for collecting personal information was not in compliance with section 39(2) of the Act.

RECOMMENDATIONS

We recommend to the Ministry that the MTHA provide notice for its collection of personal information on its form as required by section 39(2) of the Act.

Within six months of receiving this report, the Ministry should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendations.

Ann Cavoukian, Ph.D.
Assistant Commissioner

Date



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

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INVESTIGATION REPORT

INVESTIGATION I94-095P

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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of Community and Social Services (the Ministry).

The complainant was a permanent employee of a Ministry youth detention centre. He also held a part-time position with a named children's aid society (the CAS). A ward of the CAS, who was temporarily in the custody of the Ministry, had told the complainant (as a Ministry employee) that he was afraid of being assaulted by another youth in a court holding cell. The CAS ward was subsequently assaulted by the youth. The complainant was mentioned in the incident report and was suspended for three days with pay while an investigation was conducted by the detention centre. The Ministry also advised the CAS of the incident pursuant to the provisions of the Child and Family Services Act (the CFSA).

The complainant believed that the superintendent at the youth detention centre contacted the CAS and informed them that he had refused to meet with supervisors on two occasions and that the CAS should look into his work performance. It was the complainant's view that the disclosure of this information was contrary to the provisions of the Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Did the Ministry disclose the complainant's personal information to the CAS in accordance with the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (g) the views or opinions of another individual about the individual. ...
- (h) the individual's name if it appears with other personal information relating to the individual...

The information in question was the complainant's name together with the information that he had missed two scheduled meetings and the opinion that his work performance should be monitored.

It is our view that this information satisfied the requirements of paragraphs (g) and (h) of the definition of "personal information" in section 2(1) of the Act.

Conclusion: The information in question was "personal information" as defined in section 2(1) of the Act.

Issue B: Did the Ministry disclose the complainant's personal information to the CAS in accordance with section 42 of the Act?

The Ministry informed us that when there is an allegation of child abuse which involves the Ministry, the Ministry is responsible for reporting the incident to the CAS as well as investigating the matter itself. In this case, where an employee, the complainant, had been cited in the incident report, the procedure was that the Ministry was to interview the complainant and then advise the CAS when the interview had been completed, so that the CAS could proceed with its own interview. Both the Ministry and the CAS agreed that this was the practice.

The Ministry stated that the disclosure of information to the CAS had been limited to the complainant's actions with respect to the reported incident. The Ministry acknowledged that the superintendent had told the CAS that the complainant had missed two scheduled meetings with her to discuss the incident. The Ministry denied that the superintendent had told the CAS that the complainant's work performance should be monitored.

The superintendent advised us that she had spoken only with the CAS staff member who was doing the investigation (the Investigator) and that she had not said that the complainant's work should be monitored.

The complainant provided us with the names of five CAS staff members, who according to the complainant, could attest to the superintendent's alleged comments about his performance. Three of the CAS staff members informed us that they had "heard" that the complainant's work performance should be monitored but that they had not spoken directly with the superintendent on this matter.

The CAS director informed us that the CAS could not disclose information provided to the CAS by another party in the course of an investigation. However, the director stated that the CAS's contact with the superintendent was to follow up on the incident to determine whether the harm

received by the ward could have been reasonably prevented and to discuss strategies for addressing concerns regarding youths in holding cells.

Based on the information we received from the Ministry, the CAS and the complainant, we are able to determine only that the superintendent told the CAS that the complainant had missed two scheduled meetings but not whether she also said that the CAS should monitor the complainant's work performance.

Under the Act, an institution cannot disclose personal information in its custody or control except in the specific circumstances outlined in section 42 of the Act.

The Ministry stated that it had relied on section 42(e) of the Act to disclose the complainant's personal information relating to the scheduled meetings to the CAS. Section 42(e) states:

An institution shall not disclose personal information in its custody or under its control except,

- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament or a treaty, agreement or arrangement thereunder;

The Ministry referred us to the CFSA. Section 72 of the CFSA states in part:

A person who believes on reasonable grounds that a child is or may be in need of protection shall forthwith report the belief and the information upon which it is based to a society.

Section 1.(2) of Regulation 71 under the CFSA states:

The society shall investigate each complaint within twenty-one days after the complaint is recorded ...

In our view the legislation cited by the Ministry did not require the disclosure of the complainant's specific information, i.e., that he had missed two scheduled meetings with the superintendent. Since the CFSA did not impose a duty on the Ministry to disclose this information, section 42(e) of the Act was not applicable.

It is our view, however, that section 42(c) of the Act was the relevant provision in the circumstances of this case. This section states:

An institution shall not disclose personal information in its custody or under its control except,

- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;

Section 43 further provides that:

43. Where personal information has been collected directly from the individual to whom the information relates, the purpose of a use or disclosure of that information is a consistent purpose under clauses 41(b) and 42(c) only if the individual might reasonably have expected such a use or disclosure.

As previously indicated, it was a part of the agreed practice between the Ministry and the CAS that the Ministry would first interview the complainant. It was normal procedure for the superintendent to advise the CAS when a meeting with the complainant would be held. After the Ministry's meeting was completed, the CAS was to continue its own investigation which included meeting with the complainant. The superintendent stated that she had informed the CAS Investigator of two dates she was to have met with the complainant. However, she stated that when the complainant did not attend these scheduled meetings, she had informed the CAS of this since any delays in the Ministry interviewing the complainant could also affect the CAS, particularly as the CAS was required to complete its own investigation within twenty one days.

In our draft report, we indicated that it was our view that the Ministry would have compiled the complainant's personal information that he had not attended the two scheduled meetings as a part of its investigation into the incident of alleged abuse. The Ministry disclosed this personal information to the CAS so that the CAS would be informed since this could cause a possible delay in the CAS's investigation. The incident had been reported to the CAS; the complainant had been named in the report and the CAS was required to interview him. It was our view that, therefore, the complainant could reasonably have expected that if he did not attend the two scheduled meeting relating to the incident, the Ministry would inform the CAS of this. It was our view that the Ministry's disclosure was for a consistent purpose, in compliance with section 42(c).

Prior to the preparation of our draft report, the complainant had informed us that it was his view that the meetings had been unreasonably scheduled by the superintendent. However, in his comments on the draft report, the complainant subsequently stated that he had never been advised of any such meetings and that there had been no scheduled meetings that he had not attended.

We asked the Ministry for its views on the complainant's statements. The Ministry's position was that the superintendent had scheduled meetings with the complainant which he did not attend; that she had left messages on the complainant's answer machine and his pager about the meetings. However, the superintendent was unable to specify the exact dates of the two scheduled meetings, although she believed that they had been scheduled for September 27 and 30, 1994, respectively. We were also unable to obtain any supporting information from the CAS about these meetings.

We remain of the view that if there had been scheduled meetings and the complainant was advised of them, then he could reasonably have expected the Ministry's disclosure to the CAS

that he had not attended these meetings. The Ministry's disclosure would have been in compliance with section 42(c) of the Act. However, given the conflicting information provided to us by the complainant and the Ministry, we are unable to determine if such meetings were scheduled and if the complainant was aware of them. We are, thus, unable to conclude whether or not the Ministry's disclosure to the CAS was in compliance with section 42(c) of the Act.

Conclusion: We are unable to determine if the Ministry's disclosure of the complainant's personal information to the CAS was in compliance with section 42 of the Act.

SUMMARY OF CONCLUSIONS

- o The information in question was "personal information" as defined in section 2(1) of the Act.
- o We are unable to determine if the Ministry's disclosure of the complainant's personal information to the CAS was in compliance with section 42 of the Act.

Original signed by: _____
Susan Anthistle
Compliance Review Officer

May 30, 1995 _____
Date



CAIDM
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Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

INVESTIGATION REPORT

INVESTIGATION I94-098P

THE MINISTRY OF FINANCE

May 2, 1995



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint about the Ministry of Finance (the Ministry). The complainant, an employee of the Ministry, was concerned that the Ministry's collection of employees' Social Insurance Number (SIN) on three internal forms, entitled "Statement of Travelling Expenses", "Request for Leave of Absence", and "Request for Advance", was in contravention of the Freedom of Information and Protection of Privacy Act (the Act.) The complainant stated that if the SIN was not provided, the forms were returned to the employee, unprocessed.

The complainant was also concerned about the lack of confidentiality during the processing of these forms. The complainant stated that the forms passed through several hands, and were often left unattended on staff desks, where unauthorized individuals could have access to the SIN. The complainant stated that it was possible for someone to obtain personal, financial and medical information from Revenue Canada, or from the insurance company providing employee benefits by providing a name, address and the SIN.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Was the personal information collected in compliance with section 38(2) of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information" as recorded information about an identifiable individual, including,

...

- (c) any identifying number, symbol or other particular assigned to the individual,

Each of the three forms required the SIN to be provided. It is our view that the SIN is a unique identifying number assigned to an individual, and, therefore, meets the requirements of paragraph (c) of the definition of "personal information" in section 2(1) of the Act.

Conclusion: The information was personal information, as defined in section 2(1) of the Act.

Issue B: Was the personal information collected in compliance with section 38(2) of the Act?

Section 38(2) of the Act sets out the conditions for which personal information can be collected on behalf of an institution. This section states:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity.
[Emphasis added]

In our view, the Ministry's collection of the SIN on the three forms was not expressly authorized by statute nor was the collection for the purposes of law enforcement. We, therefore, examined whether the Ministry's collection met the third condition, i.e., necessary to the proper administration of a lawfully authorized activity.

The Ministry advised that the SIN was required on all three forms "to facilitate the administrative and accounting process." The Ministry also stated that the SIN was used "as a cross reference to the payroll system when T4's and T4A's are issued for tuition reimbursement and payment of professional contract staff." We noted, however, that none of the forms were specifically related to tuition reimbursement or to payment for contract staff.

In our view, the facilitation of an administrative and accounting process was a lawfully authorized activity. We, therefore, considered if the Ministry's collection of the SIN was necessary to the proper administration of this lawfully authorized activity.

"CORPAY" is the payroll system for all government employees. The SIN is used as an employee identifier to access CORPAY.

The "Request for Leave of Absence" form has to be completed when an employee applies for leave for various reasons, with or without pay, including maternity leave, bereavement leave, and jury duty.

In order for an employee to receive their correct salary and benefits, the information on this form is cross-referenced to CORPAY, which is accessed via the employee's SIN. It is, therefore, our view that the Ministry's collection of SIN on this form was necessary for the proper administration of a lawfully authorized activity, i.e., to facilitate the Ministry's payroll administration process. The Ministry's collection of the SIN on this form was, thus, in compliance with section 38(2) of the Act.

The purpose of the "Request for Advance" form and the "Statement of Travelling Expenses" form is to reimburse employees for out-of-pocket expenses incurred while travelling on Ministry business.

In our view, however, the Ministry's collection of the SIN on these forms was not necessary to

facilitate the administrative and accounting process involved, as employees could be reimbursed without accessing CORPAY. Cross-referencing for income tax purpose was not required for these two forms. For comparison purposes, we reviewed our office's "Statement of Travelling Expenses" and "Request for Advance" forms. The SIN is not required on either of these two forms.

The Ministry stated that it was the Ministry's intention in future to facilitate direct deposits of reimbursements through the payroll system which would require the SIN. However, this was not the Ministry's present process for reimbursements and was not the purpose for which the SIN was collected on these two forms.

In our view, the Ministry's collection of employees' SIN on the "Statement of Travelling Expenses" and the "Request for Advance" forms was not necessary to the proper administration of a lawfully authorized activity and was, thus, not in compliance with section 38(2) of the Act.

Conclusion: The Ministry's collection of employees' SIN on the "Request for Leave of Absence" form was in compliance with section 38(2) of the Act.

The Ministry's collection of employees' SIN on the "Statement of Travelling Expenses" and the "Request for Advance" forms was not in compliance with section 38(2) of the Act.

Other Matters

The complainant was concerned about the confidentiality of employees' SIN since the complainant believed that the forms were often left unattended on staff desks. The complainant explained that it was the number of staff having unnecessary access to an employee's SIN, rather than the actual administrative process, that was the cause for concern. The complainant advised that the procedure for filing the forms was as follows:

The completed form was given to a manager for approval, then mailed by the manager's secretary to a second location in the program area, and a copy put on file. The secretary at the second location opened the mail, delivered it to the administrative clerk, who then entered the information on the on-line financial information system, and forwarded the form to Finance and Administration. Here, one or two staff members processed the employee's cheque.

In our view, the complainant's concerns would be reduced if the SIN was omitted from the two forms that do not require the SIN, i.e., the "Statement of Travelling Expenses" form and the "Request for Advance" form.

However, we would like to remind the Ministry of the requirements of sections 4(1) and 4(2) of Regulation 460 under the Act, which state respectively that "Every head shall ensure that reasonable measures to prevent unauthorized access to records in his or her institution are defined, documented and put in place..." and "Every head shall ensure that only those who need a record for the performance of their duties shall have access to it."

SUMMARY OF CONCLUSIONS

- The information in question was personal information, as defined in section 2(1) of the Act.
- The Ministry's collection of employees' SIN on the "Request for Leave of Absence" form was in compliance with section 38(2) of the Act.
- The Ministry's collection of employees' SIN on the "Statement of Travelling Expenses" and the "Request for Advance" forms was not in compliance with section 38(2) of the Act.

RECOMMENDATION

In our draft report, we recommended that the Ministry cease the collection of employees' SIN on its "Statement of Travelling Expenses" and "Request for Advance" forms.

In its response, the Ministry informed us that it was currently analyzing the systems changes necessary to accommodate the elimination of the employee's SIN as a reference on its "Statement of Travelling Expenses" and "Request for Advance" forms and its travel expenditure records. The Ministry stated, however, that a six month period for compliance with our recommendation was "administratively awkward in relation to the use of two different employee references during an annual cycle for recording travel expenditure data."

We, therefore, ask that within six months of receiving this report, the Ministry provide us with either proof of compliance with our recommendation or an update on its implementation.

Original Signed by: _____
Susan Anthistle
Compliance Review Officer

May 2, 1995
Date



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

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INVESTIGATION REPORT

INVESTIGATION I94-101P

MINISTRY OF HOUSING

April 4, 1995



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of Housing (the Ministry).

The complainant, an employee of the Ministry, was advised in a meeting with the director of the branch (the Director) and the manager of the section where she was employed, that she was being suspended for 20 days pending an investigation. According to the complainant, once she had left the office, the Director called a branch meeting, with the manager, and disclosed to the branch staff that she had been suspended.

The complainant was concerned that this disclosure of her personal information was not in compliance with the Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Was the disclosure of the complainant's personal information to her co-workers in compliance with section 42 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The information in question was the complainant's name together with the fact that the complainant had been suspended from employment.

It is our view that this information met the requirements of paragraph (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was personal information as defined in section 2(1) of the Act.

Issue B: Was the disclosure of the complainant's personal information to her co-workers in compliance with section 42 of the Act?

Under the Act, personal information cannot be disclosed except in the specific circumstances outlined in section 42 of the Act.

The complainant maintained that it was not necessary for the Director to disclose to branch staff that she had been suspended. The complainant stated that, as an alternative, the Director could have communicated that she would be away from the office for 20 days. The complainant stated that the issues surrounding the suspension were private issues which did not involve the branch staff. The complainant was of the view that the word "suspension" implied a disciplinary leave and, thus, should not have been communicated.

The Ministry clarified that the disclosure of the complainant's personal information was not to all staff in the branch but to those staff in the section where the complainant was employed (her co-workers).

The Ministry has relied upon section 42(d) of the Act as its authority to disclose the personal information. Section 42(d) states:

An institution shall not disclose personal information in its custody or under its control except,

- (d) where disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and where disclosure is necessary and proper in the discharge of the institution's functions;

The Ministry advised us that one of its functions is to protect the security of its information and property. The Ministry stated that it is its normal business practice (and that of other ministries), when someone leaves for reasons such as contract termination or suspension, for appropriate precautions to be taken in limiting potential access. In this case, the complainant's access to the computer service (LAN) was removed, as was her access to the building and to the general office.

The Ministry submitted that it was its view that, in cases where suspensions pending investigations are required, where there may be a reasonable basis for security concerns, these concerns should in some way be communicated to the employee's co-workers, in order for them to perform their duties and properly discharge the functions of the Ministry.

The Ministry stated that it is management's right to remove an employee from the workplace for a period of time in accordance with the Public Service Act, when it has been determined that an investigation should be conducted.

The Ministry advised that, as investigations can include the review of files and other records, it is common practice to require that the employee not return to the workplace so that the integrity of those records is preserved for the purposes of the investigation. It stated that in this case, the nature of the work performed by the complainant entitled her access to a wealth of personal, confidential personnel information and that it would have been inappropriate for her to continue to have had access to this information while under active investigation. The Ministry stated that the complainant also had numerous clients within the Ministry, therefore, her co-workers needed to know that she would not be at work for a particular duration of time because of a suspension.

The Ministry maintained that the complainant's co-workers would not have been in a position to take adequate precautions in respect of their own security and in particular, the security of Ministry information, if they had been told, without further explanation, that an employee would not be returning to work for 20 days. If they did not disclose that the complainant had been suspended, it would have been necessary to tell the complainant's co-workers that she was not entitled to have access, during a 20 day period, to the section's premises, information or computer services (LAN), and that the Manager should be notified if the complainant had requested such access. The Ministry stated that these facts could have led co-workers to conclude that the complainant had been suspended.

The Ministry maintained that, having examined the alternatives, the announcement of the complainant's suspension to her immediate co-workers was an effective means of conveying to them the information they required in order to enable them to perform their duties and to discharge the Ministry's functions (i.e., to protect the security of Ministry information and property). The Ministry stated that, since this was the case, the disclosure of the complainant's suspension to her co-workers, was authorized under section 42(d) of the Act.

In discussions with the complainant, she stated that it was her view that the Ministry did not have a reasonable basis for security concerns. She stated that the reasons for her suspension would not have been sufficient to cause the Ministry to be concerned about the security of its information and property.

The complainant further stated in her comments on our draft report, that there had never been any security concerns about her nor was "security" the reason for her suspension. She also stated that it was her view that telling her co-workers that she had been suspended did not imply that she should be denied access to the premises, and that the Director "could have taken appropriate action and disclosed that [the complainant] should not be on the premises without using the word "suspension" which has a disciplinary connotation [sic] and is a private matter." The complainant further stated that the "Ministry had every right to tell the co-workers that [she] would not be around for 20 days, but they did not have the right to say that [she] was "suspended"".

However, it is our view that it is not within our jurisdiction to determine whether the Ministry's reasons for suspending the complainant were valid, or whether those reasons were sufficient to cause the Ministry to have concerns about the security of its information and property. The Ministry, under the Public Service Act, had the authority to suspend the complainant pending an investigation. The complainant was "suspended" and this was the term used by the Ministry to state the reason for her absence.

It is our view that one of the Ministry's functions was to ensure that information and property maintained within its custody and control was properly secured. The Ministry stated that in order to maintain the security of its information and property, it was necessary to advise the complainant's co-workers that she had been suspended. The Ministry further stated that this was a way of conveying to them that the complainant was not to have access to the section's premises, information or computer service (LAN), and that the manager should be notified if the complainant requested such access.

We agree with the Ministry that if it had concerns for the security of its property and information, it would have been necessary to communicate those concerns to the co-workers and that it would not have been sufficient to simply tell them that the complainant would not be returning to work for 20 days. They would not have been aware that precautions should be taken in limiting the complainant's access to the information and property in the section. In our view, disclosing to her co-workers that the complainant had been suspended had the same result as communicating to them that she was not to have access to the section's premises, information or computer service (LAN).

In our view, the Ministry has demonstrated that its disclosure that the complainant had been suspended was to employees who needed to know this in the performance of their duties, and the disclosure was necessary and proper in the discharge of the Ministry's function of ensuring the security of its information and property. Therefore, the Ministry's disclosure of the complainant's suspension to her co-workers was in compliance with section 42(d) of the Act.

Conclusion: The disclosure of the complainant's personal information to her co-workers was in compliance with section 42 of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was personal information as defined in section 2(1) of the Act.
- The disclosure of the complainant's personal information to her co-workers was in compliance with section 42 of the Act.

Original signed by:
Susan Anthistle
Compliance Review Officer

April 4, 1995
Date

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Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

INVESTIGATION REPORT

INVESTIGATION I95-001M

A POLICE SERVICES BOARD



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a police services board (the Police).

The complainant stated that he and two other individuals had been the subject of an investigation conducted by the Police on January 17, 1994. This investigation had been initiated at the request of their former employer (the employer). As a result of the investigation, an occurrence report had been prepared by the Police. No charges, however, were laid against the complainant or the other individuals. The complainant later made an access request to the Police, under the Municipal Freedom of Information and Protection of Privacy Act, (the Act), for a copy of the occurrence report. He received a copy with the personal information of the other individuals severed from it.

On the same day that the Police had conducted its investigation, the complainant had been dismissed from his employment. The complainant subsequently filed a wrongful dismissal complaint with the Ontario Labour Relations Board (the OLRB). A mediation hearing between the complainant, the employer and an OLRB representative was held to determine whether the dispute could be settled without going to a possibly lengthy hearing.

As part of the process, the lawyers for the parties to the dispute exchanged documents. Among the documents given by the employer's lawyer to the complainant's lawyer was an unsevered copy of the occurrence report.

The complainant stated that he did not authorize the Police to release the occurrence report to his former employer and was concerned that the disclosure of his personal information was contrary to the provisions of the Act.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Was the disclosure of the complainant's personal information in compliance with section 32 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information", in part, as:

recorded information about an identifiable individual, including

...

(d) the address, telephone number, finger prints or blood type of the individual,

...

(h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The information in the occurrence report included the complainant's name together with his date of birth, address, telephone number and other information about him. It is our view that this information met the requirements of paragraphs (d) and (h) of the definition of "personal information" in section 2(1) of the Act.

Conclusion: The information was the complainant's personal information, as defined in section 2(1) of the Act.

Issue B: Was the disclosure of the complainant's personal information in compliance with section 32 of the Act?

The Police stated that the investigating officers would have prepared the occurrence report using the WordPerfect computer system. A printout of that document would have then been given to an operator who would have entered the information into the Ontario Municipal and Provincial Police Automation Cooperative (OMPPAC) system which is managed by the Ministry of the Solicitor General and Correctional Services, and is shared by a number of police services across Ontario and the Ontario Provincial Police. It is an on-line system that can be used by any police service that is authorized to access OMPPAC.

The Police, however, acknowledged that the occurrence report released to the complainant as a result of his access request was not a record that was generated from OMPPAC; it was a printout of the WordPerfect document created by the investigating officers. We compared this copy of the occurrence report with the one that had been provided by the employer's lawyer to the complainant's lawyer. The two documents appeared to have been copied from the same source, i.e. the WordPerfect printout. The two documents were identical except that the copy which the complainant had obtained through his access request had the personal information of the other individuals severed.

The Police informed us that the investigation officers did not recall releasing a copy of the occurrence report to the employer and that the only means by which the employer might have received a copy of the occurrence report was by filing an access request under the Act.

The Freedom of Information and Privacy Co-ordinator for the Police, however, stated:

... at no time did I, acting in my capacity as Freedom of Information &

Protection of Privacy Coordinator, release a copy of our occurrence report #1490015 to the [named employer] or its representatives. Further, I have never received a request from the [named employer] or its representatives. As well a copy of this report was not released from the Records Department of the [named] Police to the [named employer] or its representatives at any time.

The Police also stated that they contacted the employer and was advised that the personal information released to the complainant's lawyer was information that was compiled from the complainant's employment records. We contacted the employer who stated that since the privacy legislation did not apply to them, they preferred not to comment as to how they might have obtained a copy of the occurrence report.

Although we are unable to determine conclusively how the employer obtained a copy of the occurrence report, based on the information available to us, it is our view that in all likelihood it was the Police who provided a copy to them, thereby disclosing the complainant's personal information.

Under the Act, an institution cannot disclose personal information in its custody or under its control except in the specific circumstances outlined in section 32. (The full text of section 32 is given in Appendix A.)

We have examined the provisions of section 32 and it is our view that none applied in the circumstances of this case. Therefore, the Police's disclosure of the complainant's personal information to the employer was not in compliance with section 32 of the Act.

Conclusion: The Police's disclosure was not in compliance with section 32 of the Act.

SUMMARY OF CONCLUSIONS

- The information was the complainant's personal information, as defined in section 2(1) of the Act.
- The Police's disclosure was not in compliance with the section 32 of the Act.

RECOMMENDATIONS

We recommend that the Police take steps to ensure that in future, all disclosures of personal information are made in compliance with the Act.

Within six months of receiving this report, the Police should provide the Office of the Information and Privacy Commissioner/Ontario with proof of compliance with the above recommendation.

Original Signed By:
Susan Anthistle
Compliance Review Officer

March 7, 1995
Date

32. An institution shall not disclose personal information in its custody or under its control except,
- (a) in accordance with Part I;
 - (b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;
 - (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
 - (d) if the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and if the disclosure is necessary and proper in the discharge of the institution's functions;
 - (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or treaty;
 - (f) if disclosure is by a law enforcement institution,
 - (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
 - (ii) to another law enforcement agency in Canada;
 - (g) if disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
 - (h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification is mailed to the last known address of the individual to whom the information relates;
 - (i) in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased;
 - (j) to the Minister
 - (k) to the Information and Privacy Commissioner;
 - (l) to the Government of Canada or the Government of Ontario in order to facilitate the auditing of shared cost programs.

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Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

INVESTIGATION REPORT

INVESTIGATION I95-004M

A TOWN

July 13, 1995



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a municipal town (the Town).

The complainant was suspended from his position as the Town's chief of police. During his suspension, the complainant applied for employment with a city (the City). When making this application to the City, the complainant did not provide anyone from the Town as a reference, and the Town was not aware that he had made such an application. However, according to the complainant, the City contacted the Town and the Town disclosed his salary and the fact that he had been suspended as chief of police.

The complainant was concerned that the Town's disclosure of his salary and suspension to the City, without his consent, was contrary to the Municipal Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Was the specific personal information disclosed by the Town?
- (C) Did section 27 of the Act apply to the complainant's personal information that he had been suspended?
- (D) Was the complainant's personal information that he had been suspended disclosed in compliance with section 32 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act states that personal information "means recorded information about an identifiable individual".

The information in question was the complainant's salary and the fact that he had been suspended as chief of police by the Town. While the complainant's name was not specifically mentioned in the telephone conversation between the Town and the City, he was referred to as the "chief of police" and was, therefore, an identifiable individual.

It is our view that the information in question met the requirements of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was personal information as defined in section 2(1) of the Act.

Issue B: Was the specific personal information disclosed by the Town?

The complainant stated that his actual salary and the fact that he was suspended had been disclosed by the Town.

Both the City and the Town agreed that the Town had disclosed the fact that the complainant had been suspended. The Town had advised the City that "no negotiation had been undertaken recently due to the current Chief's suspension".

However, with respect to the complainant's salary information, the Town stated that, when the City requested information regarding the salary "Classes" for the chief of police, the Town advised the City that it did not understand the request for "Classes", and that "the Chief's salary was in a specified range and that there were four classes of constables included in the range of salaries quoted...from mid-forty to mid fifty-five thousand range."

The Town maintained that it did not tell the City "specific dollar amounts", nor did it refer to the complainant or to his salary directly; "at no time was [the complainant's] name or salary mentioned during the conversation in question."

The City advised us that the Town stated that the Town did not have ranges of salaries. The City said that it was not given a salary range nor was it given the complainant's actual salary.

Both the City and the Town agreed that the complainant's **actual** salary had not been disclosed. However, based upon the conflicting information provided to us by the Town and the City, we are unable to determine whether the complainant's salary **range** was disclosed by the Town.

Conclusion: The complainant's suspension was disclosed by the Town. The complainant's actual salary was not disclosed by the Town.

Issue C: Did section 27 of the Act apply to the complainant's personal information that he had been suspended?

The Town stated that the fact that the complainant was suspended as chief of police was public knowledge. It stated that a resolution regarding the suspension was passed at an open meeting of the Police Services Board for the Town and that the local newspapers had published articles related to the suspension.

Therefore, we have examined whether section 27 of the Act was applicable to the personal information disclosed in this case. Section 27 of the Act states that:

This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public.

The Town provided a copy of minutes from a meeting of the Town's Police Services Board. These minutes included the resolution that the complainant's suspension be continued indefinitely at the discretion of the Police Services Board. The Town stated that the resolution was made at an open public meeting.

Section 27 states that the privacy provisions of the Act do not apply to personal information that **is maintained for the purpose of creating a record that is available to the general public**. While the general public may have been aware that the complainant had been suspended as chief of police, and, while that information appeared in the Police Services Board's minutes and was raised at a public meeting, the fact that the complainant had been suspended was not information that the Town was specifically maintaining "for the purpose of creating a record available to the general public". Accordingly, we do not consider this information to have been "public" within the meaning of section 27 of the Act. In our view, section 27 of the Act did not apply in the circumstances of this case.

Conclusion: Section 27 of the Act was not applicable.

Issue D: Was the complainant's personal information that he had been suspended disclosed in compliance with section 32 of the Act?

Under the Act, personal information cannot be disclosed except in the specific circumstances outlined in section 32.

The Town submitted that, "regarding the Chief's suspension, as resolutions were passed at open public meetings of the Police Services Board, we are relying on Section 63 regarding oral requests and access to public information." Since the Town is a "municipal institution", the comparable section to section 63 under the municipal Act is section 50. Section 50 of the Act provides that:

(1) If a head may give access to information under this Act, nothing in this Act prevents the head from giving access to that information in response to an oral request or in the absence of a request.

(2) This Act shall not be applied to preclude access to information that is **not personal information** and to which access by the public was available by statute, custom or practice immediately before the 1st day of January, 1991.(emphasis added)

It is our view that section 50(1) must be read in conjunction with Part I of the Act and section 32 of the Act in order to determine if "a head may give access to information under this Act". Thus, where a head may give access to information under Part I of the Act, section 32(a) would apply. Section 32(a) states that:

An institution shall not disclose personal information in its custody or under its control except,

(a) in accordance with Part I;

In past compliance investigations, we have held the view that the section 32(a) exception to the section 32 prohibition against the disclosure of personal information only applies in the context of a request by an individual, made under Part I of the Act, for personal information relating to another individual. Given that section 50(1) does not refer to "personal information", and bearing in mind that one of the purposes of the Act as set out in section 1(b) is to protect the privacy of individuals with respect to personal information, it is our view that section 50(1) should be interpreted narrowly. Therefore, in this case, since the disclosure did not involve an access request under Part I of the Act, it is our view that section 32(a) of the Act does not apply and that section 50(1) of the Act does not assist in determining whether the disclosure was in compliance with the Act.

With respect to section 50(2) of the Act, this section specifically refers to information that is not "personal information". Since we have already determined that the information in question is "personal information", it is our view that this section does not apply.

We have reviewed the remaining provisions of section 32 of the Act and it is our view that none were applicable in the circumstances of this case.

Conclusion: The disclosure of the personal information was not in compliance with section 32 of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was personal information as defined in section 2(1) of the Act.
- The complainant's suspension was disclosed by the Town. The complainant's actual salary was not disclosed by the Town.
- Section 27 of the Act was not applicable.
- The disclosure of the personal information was not in compliance with section 32 of the Act.

RECOMMENDATIONS

We recommend to the Town that:

(1) it ensure that staff are reminded of the limited circumstances under which personal information may be disclosed in compliance with section 32 of the Act, for example, by sending a memorandum to all staff outlining, a) the type of information that would be considered "personal information" as defined in section 2(1) of the Act; and b) the disclosure provisions of section 32 of the Act.

(2) it develop a policy addressing the circumstances for the external release of employees' "personal information". For example, such a policy might state that "personal information" should not be released unless the employee first consents to the release of the **particular** information, or the release of the information is consistent with the purpose for which it was collected, or the release was required by law.

Within six months of receiving this report, the Town should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendations.

Susan Anthistle
Compliance Review Officer

Date



Information and Privacy
Commissioner/Ontario
Commissaire à l'Information
et à la protection de la vie privée/Ontario

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INVESTIGATION REPORT

INVESTIGATION I95-005P

WORKERS' COMPENSATION BOARD

May 16, 1995



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Workers' Compensation Board (the Board). The complainant stated that a named Board's physician had improperly disclosed his personal information to the College of Physicians and Surgeons (the College) without his consent.

In May 1994, the complainant had filed a complaint with the College. In his complaint, he had alleged that the physician had verbally abused him, had conducted an improper examination and had not been qualified to examine him because the physician was not a neurosurgeon.

After receiving the formal complaint, the College had written to the physician on June 17, 1994 stating:

I would advise that you make written submissions for the Committee's consideration within (30) days of receipt of this letter. Under the **Regulated Health Professions Act**, the College should obtain all records and documents relating to a complaint. Therefore, should you decide to revise your written response to [the named complainant's] allegation as outline above, it would be appreciated if you forward a copy of your office records relative to the complainant's allegations.

On July 8, 1995 the physician submitted a response to the College which included photocopies of the relevant reports and memos from the complainant's file.

The complainant was of the view that the physician should not have disclosed his medical information to the College and that his rights under the Freedom of Information and Protection of Privacy Act (the Act) had been violated.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Was the disclosure of the complainant's personal information in compliance with section 42 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The information in question included the complainant's name together with his medical information. Therefore, it is our view that this information met the requirements of paragraph (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was "personal information" as defined in section 2(1) of the Act.

Issue B: Was the disclosure of the complainant's personal information in compliance with section 42 of the Act?

Section 42 of the Act sets out the rules for disclosure of personal information other than to the individual to whom the information relates. This section provides that an institution shall not disclose personal information in its custody or under its control, except in the circumstances listed in sections 42(a) through (n).

Section 42(c) of the Act states:

An institution shall not disclose personal information in its custody or under its control except,

- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;

Section 43 of the Act further provides that:

Where personal information has been collected directly from the individual to whom the information relates, the purpose of a use or disclosure of that information is a consistent purpose under clauses 41(b) and 42(c) only if the individual might reasonably have expected such a use or disclosure.

The Board submitted that the disclosure of the complainant's personal information was in compliance with section 42(c) of the Act. The Board stated that in June 1992, the complainant had been examined by the physician and a medical report had been filed in the complainant's claim file. The report had been used by the Board to determine the complainant's entitlement to benefits under the Workers' Compensation Act (the WCA).

The Board stated that after the complainant had complained to the College, the physician had sent a response to the College which included reports and memos from the complainant's file. It was the Board's view that it was reasonable for the physician to disclose relevant information about the complainant to the College since it had requested copies of the physician's office records relative to the complainant's allegations.

In addition, the Board stated that if the physician had not respond in this manner, he/she would have been guilty of a professional misconduct under section 30 of the Regulated Health Professions Act which requires a physician to respond appropriately to a written inquiry from the College.

It was the Board's view that, therefore, the physician needed to disclose the complainant's personal information to the College in order to provide a full and complete response to the complainant's allegations. It was the Board's position that it was reasonable for the complainant to have expected the disclosure of his personal information to the College and, therefore, the disclosure was for a consistent purpose.

It is our view that one of the purposes for which the Board's physician obtained the complainant's personal information through the medical examination was to determine his entitlement to benefits under the WCA.

The complainant had then filed a complaint with the College against the physician alleging that this medical examination had been improper and that the physician had not been qualified to examine him.

It is our view that the physician's subsequent disclosure of the complainant's personal information to the College was to provide an appropriate and full response to the complainant's allegations about the physician and the medical examination, thereby, enabling the College to proceed with its investigation of his complaint. It is also our view that having filed his complaint about the physician with the College, it was reasonable for the complainant to have expected that the physician would have to disclose relevant details of the medical examination and/or other medical information to the College. Therefore, the Board's disclosure to the College was for a consistent purpose, in compliance with section 42(c) of the Act.

Conclusions: The complainant's personal information was disclosed in compliance with section 42 of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was "personal information" as defined in section 2(1) of the Act.
- The complainant's personal information was disclosed in compliance with section 42 of the Act.

Original signed by: _____
Susan Anthistle
Compliance Review Officer

May 16, 1995
Date



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

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INVESTIGATION REPORT

INVESTIGATION I95-007M

A MUNICIPALITY

June 15, 1995



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a Municipality.

The complainant had been in receipt of General Welfare Assistance (GWA) from the Municipality. The complainant stated, however, that in September 1994, he became employed with the Municipality as a Welfare Visitor.

In December 1994, the Municipality terminated the complainant's employment. In his letter of termination, the complainant's Unit Manager stated that he had failed to declare assets resulting in his receiving general welfare assistance that he was otherwise not eligible for. The Unit Manager further stated that since the complainant's position of Welfare Visitor required a high degree of integrity and financial trust, the complainant was deemed to be an "unsuitable probationary employee".

The complainant subsequently filed a grievance. He stated that during the Step II grievance meeting, the Unit Manager claimed that she had received a telephone call from an employee of the Social Services Division who stated that the complainant had not declared all of his assets, resulting in his receiving GWA benefits that he was not eligible for. The complainant added that the Unit Manager claimed that she could not recall from whom she had received this telephone call.

The complainant further stated that during the Step II grievance meeting, the Municipality's Manager of Employee Relations stated that he had seen and read the contents of the complainant's GWA file.

The complainant believed that the disclosure of his personal information to his Unit Manager and the Manager of Employee Relations contravened the Municipal Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Was the complainant's personal information disclosed to the Unit Manager, in compliance with section 32 of the Act?
- (C) Was the complainant's personal information disclosed to the Manager of Employee Relations, in compliance with section 32 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the ... marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;
- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The information in question was that the complainant had allegedly not declared all of his assets, resulting in his receiving GWA benefits that he was not entitled to.

It also included information contained in the complainant's GWA file, such as information about the complainant's rent, medical and resident status, last employment, last source of income and current and expected income, and family size and relationship. It also included "flyleaf entries" from the "Income Maintenance/Eligibility Record", which recorded all communications between the complainant and his Welfare Visitor.

In our view, this information met the requirements of paragraphs (a), (b) and (h) of the definition of "personal information" in section 2(1) of the Act.

Conclusion: The information in question was "personal information" as defined in section 2(1) of the Act.

Issue B: Was the complainant's personal information disclosed to the Unit Manager, in compliance with section 32 of the Act?

As previously mentioned, the complainant stated that during the Step II grievance meeting, the Unit Manager claimed that she had received a telephone call from an employee of the Social Services Division who stated that the complainant had not declared all of his assets, resulting in his receiving benefits that he was not eligible for. The complainant added that the Unit Manager claimed that she could not recall from whom she had received this information.

Under the Act, personal information in the custody or under the control of an institution cannot be disclosed except in the specific circumstances outlined in section 32.

The Municipality submitted that on August 10, 1994, a letter was received from the complainant, in which he had complained about his Caseworker/Welfare Visitor. The Municipality added that a Staffing Co-ordinator subsequently investigated these complaints, and during the investigation "concerns were raised because the complainant was a temporary probationary employee and registered as being currently in receipt of assistance."

As a result of the above concerns, the Municipality's Fraud and Investigations Unit investigated the matter, and determined that the complainant had received benefits to which he was not entitled. The Municipality's Freedom of Information and Privacy Co-ordinator stated that it was the Fraud and Investigations Unit of the Social Services Division that had advised the complainant's Unit Manager of its findings.

The Municipality submitted that: "Consistent with s.32 (d) of the Act, (the named Unit Manager) was advised of the outcome of the investigation as it had a direct bearing on the employee-employer relationship."

The Municipality also indicated that the Unit Manager had provided the complainant with a letter setting out the reasons for termination, "in accordance with her responsibilities as Unit Manager".

Section 32(d) of the Act states that an institution shall not disclose personal information in its custody or under its control except: "if the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and if the disclosure is necessary and proper in the discharge of the institution's functions."

In our view, the Unit Manager would have needed the complainant's personal information in the performance of her duties as a manager, namely, being aware of incidents affecting the employment status of a subordinate employee. It is also our view that disclosing this information was necessary and proper in discharging the institution's function of human resource management. It is our view, therefore, that the disclosure of the complainant's personal information to the Unit Manager, an employee of the Municipality, was in compliance with section 32(d) of the Act.

Conclusion: The complainant's personal information was disclosed to the Unit Manager, in compliance with section 32 of the Act.

Issue C: Was the complainant's personal information disclosed to the Manager of Employee Relations, in compliance with section 32 of the Act?

The Municipality stated that the Manager of Employee Relations was responsible for representing the Municipality at grievance and arbitration hearings, wrongful dismissal actions,

human rights investigations, etcetera, involving employees from the complainant's department. The Municipality further stated that the complainant's union's position was that the hiring process of the complainant was irregular and improper, the fraud investigation was inadequate, and the termination was discriminatory.

The Municipality submitted that in preparing for the Step II grievance meeting, the Manager of Employee Relations "obtained copies of the records which would be relied upon during the grievance process." The Municipality stated that the Manager of Employee Relations required access to these records in order to represent the Municipality's position in respect of these matters.

While the complainant contended that the Manager of Employee Relations had stated, during the Step II meeting, that he had seen and read the contents of his GWA file, the Municipality submitted that the Manager of Employee Relations had seen a total of only 22 pages from the complainant's GWA file.

The complainant provided us with a copy of the notes recorded by his union representative during the Step II meeting. The notes did not indicate that the Manager of Employee Relations had seen and read the contents of the complainant's GWA file. We also spoke with the union representative. She stated that she could neither confirm nor deny that the Manager of Employee Relations had said this.

Since the complainant's and the Municipality's accounts of what was said by the Manager of Employee Relations during the Step II meeting differ, we are unable to conclude whether or not the Manager of Employee Relations had seen and read the **entire** contents of the complainant's GWA file.

The Municipality, however, did provide us with a copy of the aforementioned 22 pages, which consisted of 17 pages of flyleaf entries from the "Income Maintenance/Eligibility Record"; an "Eligibility Assessment Sheet"; a letter written by the complainant to an Area Office Manager complaining about his Caseworker and the Area Office Manager's reply; and a one-page document containing information under the headings: "Referral Date", "Client Data", "Disentitlement Data", and "Evidence". The Municipality's Freedom of Information and Privacy Co-ordinator stated that the Manager of Employee Relations had both requested and received these records from the aforementioned Area Office Manager to whom the complainant had complained about his Caseworker.

The Municipality relied on section 32(d) of the Act for the disclosure of the complainant's personal information to the Manager of Employee Relations (for the complete text of section 32(d) see Issue B).

In our view, one of the Municipality's functions as an employer is to respond to grievances made by one of its employees.

The Manager of Employee Relations was the Municipality employee who was responsible for representing the Municipality's interests at the Step II meeting. The Municipality took the position that in order to adequately prepare for the Step II meeting, the Manager of Employee Relations had to be aware of any information that the Municipality might be required to respond to during the meeting.

Based on all of the above, it is our view that section 32(d) of the Act applies in the circumstances of this case. The complainant's personal information, which was contained in the 22 pages in question, was disclosed to the Manager of Employee Relations, an employee of the Municipality, who needed this information in the performance of his duties, and the disclosure was necessary and proper in the discharge of one of the Municipality's functions, i.e., participating in a grievance meeting to which it was a party.

Conclusion: Since the complainant's and the Municipality's accounts of what was said by the Manager of Employee Relations during the Step II meeting differ, we are unable to conclude whether or not the Manager of Employee Relations had seen and read the entire contents of the complainant's GWA file.

The complainant's personal information, which was contained in the 22 pages in question, was disclosed to the Manager of Employee Relations, in compliance with section 32 of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was "personal information" as defined in section 2(1) of the Act.
- The complainant's personal information was disclosed to the Unit Manager, in compliance with section 32 of the Act.
- Since the complainant's and the Municipality's accounts of what was said by the Manager of Employee Relations during the Step II meeting differ, we are unable to conclude whether or not the Manager of Employee Relations had seen and read the entire contents of the complainant's GWA file.
- The complainant's personal information, which was contained in the 22 pages in question, was disclosed to the Manager of Employee Relations, in compliance with section 32 of the Act.

Original signed by:
Susan Anthistle
Compliance Review Officer

June 15, 1995
Date



Information and Privacy
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et à la protection de la vie privée/Ontario

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INVESTIGATION REPORT

INVESTIGATION I95-008M

A SEPARATE SCHOOL BOARD

July 21, 1995



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a privacy complaint concerning a separate school board (the Board). The privacy complaint was made by one of the Board's teachers.

Some students had complained to the Board about this teacher. They were concerned that the remarks the teacher had made in history class reflected an anti-Catholic/anti-Christian viewpoint.

The Board's Human Resources Committee met in-camera to discuss the students' complaints against the teacher. A background package prepared for the Committee members attending the in-camera meeting included copies of the students' complaints against the teacher, and transcripts of remarks the teacher was alleged to have made in class.

After the meeting, one of the Board's trustees, who had attended the meeting even though she was not a committee member, forwarded the package to the Archbishop, who was the local diocesan bishop. According to the Board's initial representations, the trustee wanted to obtain the Archbishop's opinion on the matter to assist herself and the Board when the matter came before the Board for a decision.

The complaint against the teacher was subsequently resolved without the intervention of the Archbishop, with a finding that the teacher's remarks had been appropriate in the context in which they had been made.

The teacher complained that the disclosure to the Archbishop had breached the Municipal Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Did the records in question contain the complainant's "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Was the personal information disclosed to the Archbishop in compliance with the Act?

RESULTS OF THE INVESTIGATION

Issue A: Did the records in question contain the complainant's "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information" as recorded information about an identifiable individual, including,

...

- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The records in question contained the teacher's name, together with the written complaint made against him by the students, and the students' names. The Board indicated that the records in question contained the personal information of the teacher. It is our view that the records in question contained both the teacher's and the students' personal information, as defined in sections 2(1)(g) and (h) of the Act.

Conclusion: The records in question contained personal information as defined in section 2(1) of the Act.

Issue B: Was the personal information disclosed to the Archbishop in compliance with the Act?

In our draft report, based on the Board's original representations, the discussion of this issue was as follows:

The Board took the position that the disclosure to the Archbishop had been made in compliance with the Act. The Board relied on sections 32(d) and 32(c) of the disclosure provisions of the Act.

Section 32(d) of the Act states in part:

An institution shall not disclose personal information in its custody or under its control except,

...

- (d) if the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and if the disclosure is necessary and proper in the discharge of the institution's functions;

The Board submitted that the personal information had been disclosed by the trustee to the Archbishop in his capacity as Honourary Director of Education and as the local diocesan bishop in the area. The trustee's intent was to seek assistance in making a decision regarding the students' complaints about the teacher. The Board, however, did not explain why the Archbishop needed to know the identity of the teacher (or of the students), in order to give an opinion on the subject.

Further, the Board informed us that the Archbishop had stated in his response to the trustee's communications that there were other steps that should be taken prior to his involvement in the matter. The Board acknowledged that the trustee did

not follow proper procedures for communicating with the Archbishop on Board related business. The Board stated that it had later advised the trustee that she should initiate such communications either through the Chair of the Board or through the Board, by way of motion. The students' complaints were eventually resolved by the Board without the Archbishop's involvement.

While there may be circumstances where the Archbishop may require disclosure of personal information in the performance of his duties, on the basis of the Board's submissions, we must conclude that in this case, the Archbishop did not need the personal information in the performance of his duties and that the disclosure was not necessary and proper in the discharge of the Board's functions. Accordingly, we are of the view that the disclosure was not in compliance with section 32(d) of the Act.

The Board also submitted that the disclosure was in compliance with section 32(c), for a consistent purpose. Section 32(c) of the Act states in part:

32. An institution shall not disclose personal information in its custody or under its control except,

...

(c) for the purpose for which it was obtained or compiled or for a consistent purpose;

...

Section 33 of the Act states:

The purpose of a use or disclosure of personal information that has been collected **directly** from the individual to whom the information relates is a consistent purpose under clauses 31(b) and 32(c) only if the individual might reasonably have expected such a use or disclosure. [emphasis added]

In this case, the teacher's personal information had been collected indirectly (i.e. from the students). Therefore, the teacher's reasonable expectations could not be a factor in determining consistent purpose. Where there has been an indirect collection of personal information, in order for the disclosure to have been made for a consistent purpose, the purpose for which the personal information was disclosed must be reasonably compatible with the purpose for which the personal information was obtained or compiled by the Board.

It was the **Board's** view that it had obtained the personal information for the purpose of investigating and resolving the students' complaints. However, the **trustee's** decision to disclose the personal information was, on the face of the Board's submissions, incompatible with the Board's own purposes, which at no point contemplated a trustee disclosing this information to the Archbishop. The Board stated that other authorized channels were available for consulting with the Archbishop if the Board had deemed that necessary (which it did not in this case).

As previously stated, the matter was resolved without the intervention of the Archbishop.

Taking all of this into account, we find that the purpose for which the trustee disclosed the personal information was not compatible with the purpose for which the Board obtained the personal information. Accordingly, we find that the disclosure was not made for a consistent purpose, and was thus not in compliance with section 32(c) of the Act.

Therefore, in our draft report we concluded that the personal information in question had not been disclosed in compliance with the Act.

However, at the same time that this case was before us, we received another complaint involving a disclosure of personal information by another trustee of the Board. In that case, the trustee had disclosed information about the employment benefits of a Board employee, by way of a press release.

We found that in the particular circumstances of that case, the trustee had disclosed the information as an individual in his "political" capacity -- as an elected official communicating with his constituents. In our view, the trustee had not acted on behalf of, or as a representative of, the Board (the institution involved); he had acted as an individual. Since the Act applies only to the actions of institutions, we concluded that the Act did not apply.

In its submissions on the draft report in the present case, the Board referred to this earlier complaint, stating that as a result of our findings in that case, regardless of its previous representations, the Board's current position was that the trustee in this case:

...is not an Officer of the Board and has no power to act on behalf of the Board. At no time was the Trustee (named) directed by the Board to act on its behalf in this matter. The Trustee (named) was not seeking the opinion of the Archbishop in order to assist her and the Board in the decision making process. Rather, as a strong defender of the teachings of the Church, elected by her constituents to do so, she was individually, in her political capacity informing the Archbishop of the complaints in order to protect the faith and acting in the furtherance of her political role as guardian of the faith at the (named) Board.

The Board stated that since it had not disclosed the information, the disclosure provisions of the Act did not apply.

In our view, this case can be contrasted with the other case since the circumstances differ considerably. In this case, the trustee disclosed the information in order to obtain the Archbishop's comments on the matter. Further, the trustee, as a member of the Board, intended to communicate those comments to the Board to assist it in its deliberations on the matter. We accept that the trustee may have been motivated to act as a "strong defender of the teachings of the Church." However, this does not change our view that the trustee was acting primarily as a member of the Board. Accordingly, we are not persuaded that the trustee was acting primarily

in a political capacity, as in the other case.

Having considered the initial and subsequent representations from the Board, we remain of the view that the disclosure was not in compliance with the Act for the reasons contained in our draft report, cited above on pages two to four.

Conclusion: The personal information in question was not disclosed in compliance with section 32 of the Act.

SUMMARY OF CONCLUSIONS

- The records in question contained personal information as defined in section 2(1) of the Act.
- The personal information in question was not disclosed in compliance with section 32 of the Act.

RECOMMENDATION

We recommend that the Board remind relevant staff and trustees that personal identifiers should be severed before disclosing records containing personal information, where the identity of the individual(s) is not required by an officer or employee of the Board in the performance of his or her duties.

Within six months of receiving this report, the Board should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation.

Original Signed by: _____
Ann Cavoukian, Ph.D.
Assistant Commissioner

July 21, 1995 _____
Date



Information and Privacy
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INVESTIGATION REPORT

INVESTIGATION I95-013M

A PUBLIC BOARD OF EDUCATION

June 7, 1995



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a public board of education (the Board). The complainants are the mother and father of one of Board's eight-year-old students. In this case, the husband is representing his wife as her agent.

Over time, there had been several incidents at school that involved altercations between the complainants' child and other children. The parents were concerned about these incidents, and had ongoing contact with Board staff in attempts to resolve the matter to their satisfaction.

On March 8, 1994, the complainant (the father) wrote to the Board's Director of Education (the Director), requesting that the Director meet with him and his wife on March 10, 1994. The letter stated:

...I am looking forward to this opportunity to have private meeting between the three of us, at which time I hope that a number of issues can be removed from the table.

I have included a series of questions for your perusal that form the basis of some of our concerns about the administration of [a named school]. I will not be pressing you to provide any feedback on these questions in our meeting but these questions are amongst those for which we would be seeking answers if we were forced to escalate our issues with [the school]. I am requesting that the enclosed information not be distributed to anyone else without my permission.

The enclosure contained a list of thirteen questions related to the altercations between the complainants' child and other children. The majority of the questions dealt with the responses of officials of the Board to concerns that were raised by the complainant and his wife.

On April 7, 1994, the Director wrote to the complainant, enclosing written answers to the questions. The Director's letter referred to the meeting of March 10, and stated:

I outlined to you on that date that it would take me a few weeks to have staff review the questions raised because of the two-week March Break. That review has taken place and I am providing to you, with this letter, answers to each of your questions, as provided to me following the review.

The complainants concluded from this letter that the questions had been disclosed to Board staff other than the Director. They believed that such disclosures would have breached the Municipal Freedom of Information and Protection of Privacy Act (the Act).

The Board acknowledged that the questions had been disclosed to Board staff other than the Director, but took the view that the disclosures had been in compliance with the Act.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Did the list of questions contain the complainants' "personal information", as defined in section 2(1) of the Act?
- (B) If yes, was the "personal information" disclosed in compliance with the Act?

RESULTS OF THE INVESTIGATION

Issue A: Did the list of questions contain the complainants' "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information" as recorded information about an identifiable individual, including,

....

- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The list of questions related to several school incidents concerning the child, and the complainants' attempts to resolve the matter with various school staff. The questions referred to both the complainants and their child by name. Therefore, it is our view that the questions contained the personal information of the complainants and their child, as defined in section 2(1)(h) of the Act.

Conclusion: The questions contained the personal information of the complainants and their child, as defined in section 2(1)(h) of the Act.

Issue B: Was the "personal information" disclosed in compliance with the Act?

Section 32 of the Act sets out the various circumstances under which an institution under the Act may disclose personal information. Section 32 of the Act states in part:

An institution shall not disclose personal information in its custody or under its control except,

...

- (b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;

...

In the circumstances of this case, the complainant had identified the information in particular (the questions), at the time he wrote his letter, and had **not** consented to its disclosure. The Board acknowledged that in the complainant's letter, he had requested that the enclosed information not be distributed to anyone else without his permission. Nevertheless, the Director had disclosed the information to other Board staff. It is our view that such a disclosure would not have been in compliance with section 32(b) of the Act. However, section 32(b) is only one of several sections permitting the disclosure of personal information which must be considered in this case.

Despite its acknowledgment on the issue of (non) consent, the Board indicated that it believed that the disclosures had been in compliance with sections 32(c) and 32(d) of the Act. Therefore, we have examined whether these, or any other sections of the Act which permit disclosure, apply in the circumstances of this case.

Sections 32(c) and 32(d) state:

An institution shall not disclose personal information in its custody or under its control except,

...

- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
- (d) if the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and if the disclosure is necessary and proper in the discharge of the institution's functions;

....

The Board's view was that the disclosure had been made for a consistent purpose. Since the information in question was collected directly from the complainant, section 33 of the Act, which defines consistent purpose, applies. Section 33 of the Act states:

The purpose of a use or disclosure of personal information that has been collected directly from the individual to whom the information relates is a consistent purpose under clauses 31(b) and 32(c) only if the individual **might reasonably have expected such a use or disclosure**. [emphasis added]

In other words, the complainant would have had to reasonably expect the disclosure in order for the disclosure to have been made for a consistent purpose, in compliance with the Act. The evidence we have received on this matter from the Board and the complainant is contradictory. The parties to the meeting of March 10 appeared to have come away from the meeting with different views of what should happen next concerning the complainant's questions.

The complainant maintains that at no time during the meeting did the Director indicate that he would have his staff review the questions. He also states that during the March 10 meeting, that they (himself, his wife and the Director) had collectively agreed to put a number of items aside, including the issues that were contained in the series of questions. In response to our draft report, the complainant re-iterated his view that the items outlined in the questions had been removed from the table and that the Director had no reason or permission to pursue them any further.

As we stated in our draft report, if the issues had already been resolved, or put aside, then in the complainant's view, there would have been no reason for his questions to be answered, and thus no reasonable expectation of disclosure on his part. If we were to take only the complainant's position into account, our view would be that the disclosure was not made for a consistent purpose, in compliance with section 32(c) of the Act, since there was no reasonable expectation on the part of the complainants.

The Act also provides under section 32(c) that personal information may be disclosed for the purpose for which it was **obtained** or compiled. Therefore, in drawing our conclusions, we also considered the Director's view of how the meeting ended, and his view of the Board's purpose for which the personal information had been obtained, since his actions following the meeting are the focus of this complaint. In contrast to the complainant's view, the Director's letter of April 10 indicated that he had "outlined" to the complainant that subsequent to the March 10 meeting, he would be taking steps to answer the complainant's questions, and that to do so, he would be seeking input from Board staff. The Board's submission further indicated that it was the Director's opinion that the serious nature of the questions did require an answer, and that the questions were not posed on a purely rhetorical basis. The Board's view was that it was acting responsibly in trying to provide accurate responses to the questions posed by the complainant.

The complainant's letter of March 8 states that he had "included a series of questions for [the Director's] perusal that form the basis of some of our concerns". It appears, then, that the complainant was anxious that the Director acquaint himself with those concerns. In our view, there would have been no constructive purpose in the complainant's providing the questions outlining his concerns to the Director unless he desired the Director to take some action to resolve those concerns. It is our understanding that the complainants sincerely wanted the problem to be resolved.

In the circumstances of this case, the action taken by the Director **following the meeting with the complainants**, is at issue. Therefore, having considered the complainant's views, we also took into account what the Director believed to be the case **at the time the meeting ended**. In the Director's view, despite the fact that the complainant's **letter** requested non-disclosure of the questions, the **meeting** had ended with agreement that the Director would find answers to the questions, and report back to the complainant. The Director's course of action in disclosing the questions to his staff, and writing to the complainant with the answers, is consistent with that view, although it is not the same view the complainants may have had when the meeting ended.

It is our view that the personal information was obtained and disclosed for the same purpose - to bring the complainant's concerns to the attention of Board staff, and to resolve the issues the complainant had raised in his questions. Therefore, we are of the view that the personal information was disclosed in compliance with section 32(c) of the Act.

The complainant submitted that the information was compiled by himself, his wife, and his lawyer, for submission to the Ministry of Education, and that his purpose in providing the questions to the Director was to show him what issues, in part, would be escalated to the Ministry of Education. We are of the view that while this may have been the **complainant's** purpose in providing the questions, the **Director's** view was that he had received the questions in order to answer them, and he took action accordingly. Therefore, we remain of the view that the disclosure to staff was in compliance with section 32(c) of the Act, for the purpose for which the personal information was obtained.

The Board also submitted that the disclosures to staff were in compliance with section 32(d) of the Act, which permits disclosure to employees who need the record in the performance of their duties. The Board indicated that the questions had been disclosed only to the following Board staff: the Superintendent of Schools and the child's school Principal, because they were the individuals who knew the answers to, and could appropriately respond to the questions, and the Director's Executive Secretary, who handled all confidential matters for the Director and who prepared the Director's response in this case.

In response to our draft report, the complainant submitted that there was a discrepancy between the above list of individuals the Board had provided to our office, and the list the complainant had been provided by the Board's Chair. We were aware of this discrepancy at the time we issued our draft report. However, we are satisfied with the expanded list of individuals provided to us for the purpose of this investigation.

We stated in our draft report that the individuals listed above would have had to know what the questions were in order to be able to answer them, or to prepare the Director's reply. The complainant submitted that "...there is no justification for releasing any section of my information to an employee who is not able to supply the required information nor in a position to evaluate the conduct of a person named in those questions". The complainant is in effect, saying that only certain questions should have been provided to the Superintendent and Principal.

In our view, disclosure of the personal information contained in the questions to an employee who did not need the record in the performance of his duties would be a breach of section 32(d) of the Act. In the circumstances of this case, the complainant has stated in his comments on our draft report that the majority of his questions were about responses from officials of the Board. Both the Principal and Superintendent involved are Board officials whose conduct is at issue. It is our understanding that there is a reporting relationship between these two individuals.

It is our view that in certain circumstances, an appropriate approach would have been to provide only certain questions to these employees. However, it is also our view that the complete context and breadth of the questions would have been important for both the Superintendent and Principal to understand, given the serious nature of the complainant's concerns, and the fact that both would have to deal with the situation in the future.

Therefore, we remain of the view that the disclosures to the above employees were in compliance with section 32(d) of the Act.

We are also of the view that no other sections of the disclosure provisions of the Act apply to the disclosures in question.

Conclusion: The personal information was disclosed in compliance with sections 32(c) and (d) of the Act.

SUMMARY OF CONCLUSIONS

- The questions contained the personal information of the complainants and their child, as defined in section 2(1)(h) of the Act.
- The personal information was disclosed in compliance with sections 32(c) and (d) of the Act.

Original signed by:
Susan Anthistle
Compliance Review Officer

June 7, 1995
Date



Information and Privacy
Commissioner: Ontario
Commissaire à l'information
et à la protection de la vie privée: Ontario

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INVESTIGATION REPORT

INVESTIGATION I95-039P

MINISTRY OF MUNICIPAL AFFAIRS AND HOUSING

August 25, 1995



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of Housing, now the Ministry of Municipal Affairs and Housing (the Ministry).

The complainant, an employee of the Ministry, had lodged a complaint with the Ministry regarding the actions of two of its directors. The Ministry had appointed an investigator from Management Board (the Investigator) to look into her complaint. The complainant's letters about her complaint had then been disclosed by the Ministry to the Investigator.

The complainant stated that, at the time of the disclosure, she and the Ministry had not yet agreed about whether the Investigator would be the individual assigned to her complaint. The complainant stated that, since another individual was subsequently appointed instead of the Investigator "to hear other concerns which would have included the one [the Investigator] was asked to investigate", her personal information had been prematurely sent to the Investigator, without her consent.

The complainant was concerned that the Ministry's disclosure of her personal information to the Investigator had been contrary to the Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If so,
- (B) Was the Ministry's disclosure of the personal information in compliance with section 42 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act states that personal information means recorded information about an identifiable individual, including,

- (h) the individual's name where it appears with other personal information relating to the individual...

The information in question was contained in the complainant's letters, and included the complainant's name together with information about her complaint against the two directors.

It is our view that the information in question met the requirements of paragraph (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was personal information as defined in section 2(1) of the Act.

Issue B: Was the Ministry's disclosure of the personal information in compliance with section 42 of the Act?

The complainant stated that her personal information had been prematurely sent to the Investigator since an agreement about whom the assigned investigator would be had not been reached and since another individual was subsequently appointed to investigate. When the Investigator was assigned to look into the complaint, the complainant initially objected to her being selected. The complainant, however, later stated in a letter to the Deputy Minister (the DM) that, while it was her belief that the process was not impartial because of the particular investigator assigned, "as my Deputy, your decision in this matter is respected."

The complainant also stated that in a subsequent discussion with the Ministry, the Assistant Deputy Minister (the ADM) suggested that she prepare and send him her own release form for the disclosure of the information in question to the Investigator, but she did not do this. The complainant stated that, since the ADM had requested that she take this action "after-the-fact", he was aware that a violation of her privacy had taken place at the time the information had been disclosed to the Investigator.

Under the Act, personal information cannot be disclosed except in the specific circumstances outlined in section 42 of the Act.

The Ministry stated that it had relied upon sections 42(c) and 42(d) of the Act for its disclosure of the personal information in question. Section 42(c) states that "an institution shall not disclose personal information in its custody or under its control except,"

- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;

The Ministry advised us that the complainant had made some very serious allegations about the actions of the two directors. In a letter to the Ministry dated May 24, 1994, the complainant had stated that her complaint warranted the intervention of the DM. According to the Ministry, the complainant had, both verbally and by electronic mail, notified the Ministry that she wanted the complaint either to be directed back to her director or to have an independent investigator assigned.

On June 2, 1994, the DM wrote to the complainant advising her that a formal review of the matter would take place. He stated that he would arrange for someone to review these matters and report to him with findings and recommendations. On June 20, 1995, the DM notified the complainant that the Investigator had been assigned to conduct the investigation.

The Ministry stated that "it was never held out to [the complainant] that there would be an 'agreed' upon investigator or protocol for the investigation." The Ministry stated that it was the prerogative of the DM, as the person having charge of the administrative affairs of the Ministry, to cause investigations to be conducted when allegations such as those made by the complainant were made. As well, the complainant had asked that the Ministry assign an independent investigator.

When the complainant's personal information was disclosed to the Investigator, it was the intention of the DM that the Investigator would be the individual who would conduct an investigation into the complainant's allegations. Some preliminary work was done by the Investigator and it was not until April 1995 that another person was assigned to look into other matters concerning the complainant, as well as to investigate her complaint about the directors.

The Ministry stated that under section 42(c) of the Act, the Ministry's disclosure to the Investigator was consistent with the purpose of having the matter reviewed, which was the reason the complainant wrote to the Ministry. The Ministry suggested that it should have been foreseeable by the complainant that her personal information would have to be reviewed in any investigation that took place. The Ministry stated that the disclosure of the complainant's personal information was, thus, in compliance with section 42(c) of the Act.

In our view, the Ministry obtained or compiled the complainant's personal information for the purpose of dealing with the complaint she had lodged against the two directors. The DM, being responsible for the administrative affairs of the Ministry, determined that the allegations made by the complainant warranted an investigation and had, thus, arranged for the Investigator to deal with her complaint by reviewing the matter and reporting to him. It is our view that the DM was not required to obtain the complainant's agreement about whom the assigned investigator would be. Further, the complainant had stated that she respected the DM's decision in the matter of his selection of the Investigator.

The complainant stated that, while she understood that it might have been necessary for information about her complaint to be forwarded to the Investigator, her actual complaint letters to the Ministry should not have been sent. However, it is our view that the Ministry disclosed the complainant's actual documents containing her personal information to the Investigator for the purpose of ensuring that the Investigator, who had been assigned to deal with this complaint, would conduct a thorough and accurate investigation and that, ultimately, an appropriate and full response to the complainant's allegations would be provided. It is, thus, our view that the Ministry's disclosure of the complainant's personal information to the Investigator was for the purpose for which the information was obtained or compiled, i.e. to deal with the complaint, in compliance with section 42(c) of the Act.

Since the Ministry's disclosure of the complainant's personal information was in compliance with section 42(c) of the Act, we did not address the application of section 42(d) of the Act.

Conclusions: The complainant's personal information was disclosed in compliance with section 42 of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was personal information as defined in section 2(1) of the Act.
- The complainant's personal information was disclosed in compliance with section 42 of the Act.

Original signed by:
Susan Anthistle
Compliance Review Officer

August 25, 1995
Date

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et à la protection de la vie privée/Ontario

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INVESTIGATION REPORT

INVESTIGATION I95-033M

A Municipality

August 31, 1995



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a Municipality.

The complainant is a former employee of the Municipality's housing corporation. In a letter dated March 9, 1994, the complainant's then District Manager referred to the complainant's inability to work harmoniously with her colleagues and her work history of "conflict, disruption and turmoil," and requested that she obtain a medical certificate attesting to her "psychological and emotional competence." While the complainant refused to provide the medical certificate, she nonetheless questioned the Municipality's authority to collect this information.

In July 1994, the Municipality terminated the complainant's employment, and the complainant subsequently applied for unemployment insurance (UI) benefits. In a hearing to determine the complainant's eligibility for benefits, a Board of Referees for Employment and Immigration Canada (EIC) referred the matter back to the EIC with a request that it obtain more details about the complainant's confrontational style and her inability to work harmoniously with her colleagues.

In response to this request, the Municipality provided the EIC with a copy of a decision of the Ontario Labour Relations Board (the OLRB), which was made further to an application brought to the OLRB by the complainant regarding her union. The complainant submitted that because the OLRB's decision was irrelevant to the EIC's request, the Municipality's disclosure of it violated the Municipal Freedom of Information and Protection of Privacy Act (the Act).

As well as being an employee, the complainant was also a tenant of the Municipality's housing corporation. She stated that the following documents relating to her employment with the Municipality were delivered to her home in an unsecured fashion, in contravention of the Act:

- the aforementioned letter of March 9, 1994,
- a letter dated June 29, 1994 relating to the fact that the complainant had been suspended,
- the complainant's letter of termination dated July 14, 1994, and
- the complainant's 1992 OMERS pension statement.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Was the Municipality's proposed collection of the complainant's personal information, in compliance with section 28(2) of the Act?
- (C) Was the complainant's personal information disclosed to the EIC, in compliance with section 32 of the Act?

- (D) Was the complainant's personal information protected by the Municipality, in compliance with the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, ...

...

- (c) any **identifying number**, symbol or other particular assigned to the individual,

...

- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual; [emphasis added]

The information that the Municipality had intended to obtain was a medical certificate attesting to the complainant's psychological and emotional competence. In our view, this information would have met the requirements of paragraph (h) of the definition of "personal information" in section 2(1) of the Act.

The information in question also included information contained in the decision of the OLRB, which was:

- the complainant's name,
- a description of the complainant's application to the OLRB and the remedies she had sought, and the OLRB's decision in this regard,
- a description of the incidents about which the complainant had or had not filed grievances, and
- details of an "arrangement" the complainant's union had negotiated with the Municipality respecting the complainant's suspension grievance, and the fact that the complainant had rejected this arrangement.

It is our view that this information met the requirements of paragraph (h) of the definition of "personal information" in section 2(1) of the Act.

The information in question also included the March 9, June 29, and July 14, 1994 letters concerning the complainant's employment, and the complainant's 1992 OMERS pension statement, which contained her age, social insurance number and pension information. In our view, this information met the requirements of paragraphs (a), (c) and (h) of the Act.

Conclusion: The information in question was "personal information" as defined in section 2(1) of the Act.

Issue B: Was the Municipality's proposed collection of the complainant's personal information, in compliance with section 28(2) of the Act?

While the Municipality did not actually collect any information with regard to this incident, it had intended to collect a medical certificate from the complainant attesting to her psychological and emotional competence.

Section 28(2) of the Act states:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or **necessary to the proper administration of a lawfully authorized activity.** (emphasis added)

The Municipality submitted that its proposed collection of the medical certificate was necessary to the proper administration of a lawfully authorized activity. It stated: "the request for a medical certificate was necessary in order for (the named housing corporation) to carry out its role in managing staff."

The Municipality explained that the complainant was given the option of obtaining the medical certificate from a medical practitioner of her choosing. It added, however, that if the complainant had failed to provide the medical certificate within the required deadline, the housing corporation would have made an appointment with the Municipality's Occupational Health, Safety and Rehabilitation Division, as per Article 39 of the collective agreement between the housing corporation and the complainant's union.

Article 39 states that the housing corporation shall adopt or agree to a rehabilitation policy the same as the Municipality's.

The Municipality provided us with a copy of its rehabilitation policy, which consists, in part, of a memorandum dealing with "Absenteeism and Poor or Declining Performance." In the memorandum, the following is stated:

If however, the employee's performance and/or attendance record are poor, and the supervisor/manager feels there may be a medical problem, he/she may be referred to Employee Health Services under the following clause in the [named] Collective Agreement and [named] memorandum of understanding:

"10:16 - That the [Municipality] may require any employee to submit to a medical examination by a physician designated by the [Municipality]."

We concur with the Municipality that managing staff is a lawfully authorized activity. It is also our view that in certain limited circumstances it is necessary for an employer to obtain a medical assessment with respect to an employee who is exhibiting poor performance or attendance, and the supervisor or manager feels there may be a medical problem. Thus, assuming -- without deciding -- that the complainant's behaviour was disruptive, we find that the proposed collection of the medical certificate would have been necessary in the circumstances.

Conclusion: The Municipality's proposed collection of the complainant's personal information would have been in compliance with section 28(2) of the Act.

Issue C: Was the complainant's personal information disclosed to the EIC, in compliance with section 32 of the Act?

As previously mentioned, a Board of Referees for Employment and Immigration Canada (EIC) had referred the matter of the complainant's eligibility for UI back to the EIC with a request that it obtain more details about the complainant's confrontational style and her inability to work harmoniously with her colleagues.

The Municipality stated that a copy of the Board of Referees' request was sent to the housing corporation, and that, subsequently, the EIC contacted the housing corporation and asked for the additional details sought by the Board of Referees. The Municipality stated that in replying to the request, the EIC was informed of the OLRB decision, a matter to which the complainant was a party, and the housing corporation an intervenor. The Municipality stated that the EIC then requested a copy of the OLRB decision, and the Municipality provided it with one.

The Municipality submitted that its disclosure of the OLRB decision to the EIC was in compliance with section 32(c) of the Act, which states: "An institution shall not disclose personal information in its custody or under its control except ... (c) for the purpose for which it was obtained or compiled or for a consistent purpose."

The Municipality further submitted that: "... the complainant should reasonably have expected that, in view of the decision of the Board of Referees to refer the matter back for further details on her style and behaviour, such pertinent information as the Ontario Labour Relations Board Decision would be disclosed to the Unemployment Insurance Commission (i.e., Employment and Immigration Canada)."

In our view, the Municipality obtained or compiled the complainant's personal information contained in the decision of the OLRB to deal with labour management issues arising out of its employment of the complainant. Since the Municipality disclosed the OLRB decision to the EIC further to the proceedings regarding the complainant's eligibility for UI benefits, another labour management issue, it is our view that the Municipality disclosed the complainant's personal information for the "same purpose," in compliance with section 32(c) of the Act.

Conclusion: The complainant's personal information was disclosed to the EIC, in compliance with section 32 of the Act.

Issue D: Was the complainant's personal information protected by the Municipality, in compliance with the Act?

As previously mentioned, as well as being an employee, the complainant was also a tenant of the Municipality's housing corporation. The complainant stated that certain documents relating to her employment with the Municipality were delivered to her in an unsecured fashion, in contravention of the Act.

Sections 3(1) and (2) of Regulation 823 under the Act state:

- (1) Every head shall ensure that reasonable measures to prevent unauthorized access to the records in his or her institution are defined, documented and put in place, taking into account the nature of the records to be protected.
- (2) Every head shall ensure that only those individuals who need a record for the performance of their duties shall have access to it.

Letters of March 9, June 29 and July 14, 1994

The complainant stated that the original copies of the aforementioned letter of March 9th and her letter of termination, dated July 14, 1994, were initially given to her Superintendent by her Manager. The complainant added that she had subsequently found these letters taped to the door of her unit in unsealed envelopes. The complainant was concerned that anyone in the building could have read these letters.

The Municipality submitted that, to the best recollection of the Manager, the original copies of the letter of March 9th and the termination letter of July 14th were in sealed envelopes, hand delivered by the Superintendent. The Municipality added that, according to the Superintendent, the letters were not taped to the door of the complainant's unit, but were pushed under her apartment door.

The complainant later clarified that the March 9th letter was in fact pushed under her apartment door, but in an unsealed versus sealed envelope. She further clarified that it was a letter dated June 29, 1994, relating to her suspension, that had been taped to her door in an unsealed envelope, instead of the March 9th letter.

Given the differing accounts of how these letters were delivered to the complainant, we are not able to make a conclusive finding as to whether the complainant's personal information was protected in compliance with the Act, with regard to these letters.

Pension Statement

The complainant stated that on January 19, 1994, her then Superintendent handed her a large envelope -- the type used for repeat delivery of interdepartmental correspondence. The complainant explained that the envelope contained her confidential 1992 OMERS pension statement, which included her age, social insurance number and pension information. The complainant questioned why a confidential document would be delivered to her in this unsecured fashion, when, on the contrary, she had observed the Superintendent and the Assistant Superintendent open their pension statements which were delivered in sealed OMERS envelopes.

The Municipality submitted that no pension material was sent to staff of the housing corporation on January 19, 1994. It added that the 1992 pension statements were distributed to staff in late December 1993 or early January 1994, in sealed OMERS envelopes.

The Municipality also stated that, at the complainant's request, OMERS revised the beneficiary information on the complainant's 1992 statement. The Municipality added that neither its own employee, who administered OMERS internally, nor the OMERS employee who had revised the complainant's statement, could recall if the revised statement had been sent to the housing corporation "in an individual OMERS envelope or if both copies were sent to the employer in a manila envelope." The Municipality further stated that, on April 11, 1994, a revised statement and a covering memo were placed in a sealed manila envelope, stamped "Confidential" and mailed directly to the complainant's home address.

The complainant subsequently clarified that she had received her 1992 OMERS statement on February 24, 1994, not January 19, 1994.

Given the differing accounts of how the complainant's 1992 pension statement was delivered to the complainant, we are not able to make a conclusive finding as to whether the complainant's personal information was protected in compliance with the Act, in this regard.

Conclusion: Our findings are inconclusive as to whether the complainant's personal information was protected by the Municipality, in compliance with the Act.

SUMMARY OF CONCLUSIONS

- The information in question was "personal information" as defined in section 2(1) of the Act.
- The Municipality's proposed collection of the complainant's personal information would have been in compliance with section 28(2) of the Act.
- The complainant's personal information was disclosed to the EIC, in compliance with section 32 of the Act.
- Our findings are inconclusive as to whether the complainant's personal information was protected by the Municipality, in compliance with the Act.

Original Signed By: _____
Susan Anthistle
Compliance Review Officer

August 31, 1995
Date
